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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

- FILED

UNITED STATES OF AMERICA MAY - 8 2019 CRIMINAL DOCKET FOR CASE
: NO. 2-18-CR-00100-PTB-1

-VS-

KATE BARKMAN, Clerk
By 75 Dep. Clerk

MICHAEL ROHANA

ORIGINAL

PHILADELPHIA, PA.
APRIL 1, 2019

BEFORE HONORABLE JUDGE PETRESE B. TUCKER

TRIAL - DAY 1

APPEARANCES:

FOR THE GOVERNMENT: U.S. ATTORNEY'S OFFICE
BY: K.T. NEWTON, AUSA
615 CHESTNUT STREET, SUITE 1250
PHILADELPHIA, PA 19106

LYNN MCCLOSKEY, RPR
OFFICIAL COURT REPORTER
1234 US COURTHOUSE
601 MARKET STREET
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JC

1 APPEARANCES (CONT.)

2 FOR THE DEFENDANT: FEDERAL COMMUNITY DEFENDER
3 BY: CATHERINE C. HENRY, ESQUIRE
4 AND
5 NANCY MACEOIN, ESQUIRE
6 OFFICE - EDPA
7 SUITE 540W
8 THE CURTIS CENTER
9 601 WALNUT STREET
10 PHILADELPHIA, PA 19106

11 ALSO PRESENT:

12 MICHAEL SCHWARTZ, ESQUIRE
13 REPRESENTING THE FRANKLIN INSTITUTE
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1 THE COURT: OKAY. YOU MAY BE SEATED.

2 WE HAVE ONE OUTSTANDING -- WELL, ONE
3 OUTSTANDING MOTION INVOLVING THE DEFENDERS ASSOCIATION.
4 IS IT NECESSARY TO RESOLVE THAT BEFORE WE BRING --

5 MS. MACEOIN: JUST ONE MOMENT, YOUR
6 HONOR.

7 YOUR HONOR, PROVIDED -- AS LONG AS THE
8 GOVERNMENT IS NOT ARGUING THAT PARTICULAR DEFINITION IN
9 THEIR OPENING STATEMENT, WE CAN WAIT UNTIL THE REGULAR
10 JURY CHARGE IN THIS CASE. WE DO SUBMIT THAT IT IS
11 OUTSIDE OF THE STRAIGHT-UP DEFINITION WITHIN THE
12 STATUTE, AND AS SUCH, WE NEED TO PROCEED WITH THE
13 DEFINITION OF THE STATUTE, WHICH IS WORTH BEING A
14 MONETARY VALUE OF EITHER \$100,000 OR 500 -- OR \$5,000.

15 THE COURT: MS. NEWTON.

16 MS. NEWTON: WELL, YOUR HONOR, I DO NOT
17 PLAN ON GIVING THE DEFINITION OF WORTH DURING MY OPENING
18 STATEMENT BUT I WILL ALSO SAY TO THE COURT THAT I DON'T
19 BELIEVE THAT SAYING WORTH OF \$5,000 IS A DEFINITION OF
20 WORTH.

21 MS. MACEOIN: YOUR HONOR, WHAT WE ARE
22 TALKING ABOUT IS THE PROPOSED DEFINITION IN THE JURY
23 INSTRUCTIONS, WHICH IS THE DEFINITION FROM BLACK'S LAW
24 DICTIONARY.

25 THE COURT: IF THAT'S NOT GOING TO BE

1 ARGUED, THEN THAT CAN WAIT UNTIL WE DISCUSS THE POINTS
2 FOR CHARGE.

3 MS. MACEOIN: THANK YOU.

4 THE COURT: OKAY, WE CAN BRING THE JURY
5 IN.

6 (JURY IN.)

7 THE COURT: OKAY, YOU MAY BE SEATED.

8 MEMBERS OF THE JURY, NOW THAT YOU HAVE
9 BEEN SWORN, I WILL GIVE YOU SOME PRELIMINARY
10 INSTRUCTIONS TO GUIDE YOU IN YOUR PARTICIPATION IN THE
11 TRIAL. AS JURORS IT WILL BE YOUR DUTY TO FIND FROM THE
12 EVIDENCE WHAT THE FACTS ARE. YOU AND YOU ALONE WILL BE
13 THE JUDGE OF THE FACTS. YOU WILL THEN HAVE TO APPLY
14 THOSE FACTS TO THE LAW THAT I WILL GIVE TO YOU. YOU
15 MUST FOLLOW THE LAW WHETHER YOU AGREE WITH IT OR NOT.
16 NOTHING THAT I SAY OR DO DURING THE COURSE OF THIS TRIAL
17 IS INTENDED TO INDICATE OR SHOULD BE TAKEN BY YOU AS
18 INDICATING WHAT YOUR VERDICT SHOULD BE. THE EVIDENCE
19 FROM WHICH YOU WILL FIND THE FACTS WILL CONSIST
20 OF -- CONSIST OF THE TESTIMONY OF THE WITNESSES,
21 DOCUMENTS AND OTHER THINGS RECEIVED INTO THE RECORD AS
22 EXHIBITS, AND ANY FACTS THAT THE LAWYERS AGREE TO OR
23 STIPULATE TO OR THAT THE COURT MAY INSTRUCT YOU TO FIND.
24 CERTAIN THINGS ARE NOT EVIDENCE AND MUST
25 NOT BE CONSIDERED BY YOU AS EVIDENCE. THEY INCLUDE:

1 STATEMENTS, ARGUMENTS AND QUESTIONS OF THE LAWYERS ARE
2 NOT EVIDENCE. IT IS THE WITNESS'S ANSWERS THAT PROVIDE
3 THE EVIDENCE FOR YOU. OBJECTIONS TO QUESTIONS ARE NOT
4 EVIDENCE. LAWYERS HAVE AN OBLIGATION TO THEIR CLIENTS
5 TO MAKE OBJECTIONS WHEN THEY BELIEVE THAT THE EVIDENCE
6 BEING OFFERED IS IMPROPER UNDER THE RULES OF THE
7 EVIDENCE. YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION
8 OR BY MY RULING ON THE OBJECTION. IF AN OBJECTION IS
9 SUSTAINED, THAT MEANS THAT THE WITNESS IS NOT TO ANSWER
10 AND YOU SHOULD IGNORE THE QUESTION. IF IT IS OVERRULED,
11 THEN THE WITNESS IS PERMITTED TO ANSWER AND YOU MAY
12 TREAT THE ANSWER LIKE ANY OTHER EVIDENCE IN THE CASE.
13 SOMETIMES A WITNESS EITHER -- ANSWERS BEFORE THE
14 OBJECTION CAN BE MADE. IF THAT HAPPENS, THEN IF THE
15 OBJECTION IS SUSTAINED, THAT MEANS THAT THE ANSWER IS
16 STRICKEN FROM THE RECORD AND IS STRICKEN FROM YOUR
17 CONSIDERATION IN THE CASE. TESTIMONY THAT THE COURT HAS
18 EXCLUDED OR TOLD YOU TO DISREGARD IS NOT EVIDENCE AND
19 MAY NOT BE CONSIDERED. ANYTHING YOU MAY HAVE SEEN OR
20 HEARD OUTSIDE THE COURTROOM IS NOT EVIDENCE AND MUST BE
21 DISREGARDED. YOU ARE TO DECIDE THIS CASE SOLELY ON THE
22 EVIDENCE PRESENTED HERE IN THE COURTROOM.

23 NOW, THERE ARE TWO KINDS OF EVIDENCE,
24 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT
25 EVIDENCE IS PROOF OF A FACT, SUCH AS TESTIMONY OF AN

1 EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS PROOF OF FACTS
2 FROM WHICH YOU MAY INFER OR CONCLUDE THAT OTHER FACTS
3 EXIST. I WILL GIVE YOU FURTHER INSTRUCTIONS ON THESE AS
4 WELL AS OTHER MATTERS AT THE END OF THE CASE. BUT KEEP
5 IN MIND THAT YOU MAY CONSIDER BOTH KINDS OF EVIDENCE,
6 BOTH DIRECT AND CIRCUMSTANTIAL.

7 IT IS UP TO YOU AS JURORS TO DECIDE WHICH
8 WITNESSES TO BELIEVE, WHICH WITNESSES NOT TO BELIEVE,
9 AND HOW MUCH OF ANY WITNESS'S TESTIMONY TO ACCEPT OR
10 REJECT. I WILL AGAIN GIVE YOU SOME GUIDELINES FOR
11 DETERMINING THE CREDIBILITY OF WITNESSES AT THE END OF
12 THIS CASE.

13 AS YOU KNOW, THIS IS A CRIMINAL CASE.
14 THERE ARE THREE BASIC RULES ABOUT A CRIMINAL CASE THAT
15 YOU MUST KEEP IN MIND. FIRST, THE DEFENDANT IS PRESUMED
16 INNOCENT UNLESS AND UNTIL PROVEN GUILTY. THE INDICTMENT
17 AGAINST THIS DEFENDANT BROUGHT BY THE GOVERNMENT IS ONLY
18 AN ACCUSATION, NOTHING MORE. IT IS NOT PROOF OF GUILT
19 OR ANYTHING ELSE. THE DEFENDANT THEREFORE STARTS OUT
20 WITH A CLEAN SLATE.

21 SECOND, THE BURDEN OF PROOF IS ON THE
22 GOVERNMENT UNTIL THE VERY END OF THE CASE. THE
23 DEFENDANT HAS NO BURDEN TO PROVE HIS INNOCENCE OR TO
24 PRESENT ANY EVIDENCE OR TO TESTIFY. SINCE THE DEFENDANT
25 HAS THE RIGHT TO REMAIN SILENT, THE LAW PROHIBITS YOU

1 FROM ARRIVING AT YOUR VERDICT BY CONSIDERING THE
2 DEFENDANT MAY NOT HAVE TESTIFIED.

3 THIRD, THE GOVERNMENT MUST PROVE THE
4 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. YOU WILL
5 GET FURTHER INSTRUCTIONS ON THIS POINT LATER, BUT BEAR
6 IN MIND THAT THIS IS A CRIMINAL CASE AND THE BURDEN OF
7 PROOF IS DIFFERENT THAN A CIVIL CASE.

8 NOW, A FEW WORDS ABOUT YOUR CONDUCT AS
9 JURORS. FIRST, I WILL INSTRUCT YOU THAT DURING THE
10 TRIAL YOU ARE NOT TO DISCUSS THIS CASE WITH ANYONE, OR
11 TO PERMIT ANYONE TO DISCUSS IT WITH YOU. UNTIL YOU
12 RETIRE TO THE JURY ROOM TO DELIBERATE AT THE END OF THIS
13 CASE, YOU SIMPLY ARE NOT TO TALK ABOUT THE CASE. AS
14 JURORS, YOU MUST DECIDE THIS CASE SOLELY ON THE EVIDENCE
15 PRESENTED HERE WITHIN THE FOUR WALLS OF THIS COURTROOM.
16 THAT MEANS THAT DURING THE TRIAL, YOU MUST NOT CONDUCT
17 ANY INDEPENDENT RESEARCH ABOUT THIS CASE, THE MATTERS IN
18 THIS CASE, OR THE INDIVIDUALS INVOLVED IN THIS CASE. IN
19 OTHER WORDS, YOU SHOULD NOT CONSULT DICTIONARIES OR
20 REFERENCE MATERIALS, SEARCH THE INTERNET, WEBSITES,
21 BLOGS OR USE ANY ELECTRONIC TOOLS TO OBTAIN INFORMATION
22 ABOUT THIS CASE OR TO HELP YOU DECIDE THE CASE. PLEASE
23 DO NOT TRY TO FIND OUT INFORMATION FROM ANY SOURCE
24 OUTSIDE THE CONFINES OF THIS COURTROOM.

25 UNTIL YOU RETIRE TO DELIBERATE, YOU MAY

1 NOT DISCUSS THIS CASE WITH ANYONE, INCLUDING YOUR FELLOW
2 JURORS. AFTER YOU RETIRE TO DELIBERATE, YOU MAY BEGIN
3 DISCUSSING THIS CASE WITH YOUR FELLOW JURORS BUT YOU
4 CANNOT DISCUSS THE CASE WITH ANYONE ELSE UNTIL YOU HAVE
5 RETURNED A VERDICT AND THE CASE IS AT AN END.

6 I HOPE THAT FOR ALL OF YOU, THIS CASE IS
7 INTERESTING AND NOTEWORTHY. I KNOW THAT MANY OF YOU USE
8 CELL PHONES, BLACKBERRIES, THE INTERNET AND OTHER TOOLS
9 OF TECHNOLOGY. YOU ALSO MUST NOT TALK TO ANYONE ABOUT
10 THIS CASE OR USE THESE TOOLS TO COMMUNICATE
11 ELECTRONICALLY WITH ANYONE ABOUT THE CASE. THIS
12 INCLUDES YOUR FAMILY AND YOUR FRIENDS. YOU MAY NOT
13 COMMUNICATE WITH ANYONE ABOUT THE CASE ON YOUR
14 CELLPHONE, THROUGH E-MAIL, BLACKBERRY, IPHONE, TEXT
15 MESSAGING OR TWITTER, THROUGH ANY BLOG OR WEBSITE,
16 THROUGH ANY INTERNET CHATROOM OR BY WAY OF ANY OTHER
17 SOCIAL NETWORKING WEBSITES, INCLUDING FACEBOOK, MYSPACE,
18 LINKEDIN AND YOUTUBE.

19 DO NOT READ OR LISTEN TO ANYTHING
20 TOUCHING ON THIS CASE IN ANY WAY. IF ANYONE SHOULD TRY
21 TO TALK TO YOU ABOUT IT, BRING IT TO THE COURT'S
22 ATTENTION PROMPTLY. DO NOT FORM ANY OPINION UNTIL ALL
23 THE EVIDENCE IS IN. YOU MUST KEEP AN OPEN MIND UNTIL
24 YOU START YOUR DELIBERATIONS AT THE END OF THIS CASE.

25 NOW THE TRIAL WILL BEGIN. THERE IS A

1 PARTICULAR ORDER IN WHICH THE PROCEEDING WILL GO. FIRST
2 YOU WILL HEAR FROM THE GOVERNMENT. THE GOVERNMENT WILL
3 MAKE AN OPENING STATEMENT. AN OPENING STATEMENT IS NOT
4 EVIDENCE, IT IS MERELY AN OUTLINE TO HELP YOU UNDERSTAND
5 THE EVIDENCE AS IT COMES IN.

6 NEXT, THE DEFENSE ATTORNEY MAY, BUT DOES
7 NOT HAVE TO, MAKE AN OPENING STATEMENT AT THIS TIME.
8 AGAIN, OPENING STATEMENTS ARE NOT EVIDENCE OR ARGUMENTS.
9 ONCE THE OPENING STATEMENTS HAVE BEEN PRESENTED, THE
10 GOVERNMENT WILL PRESENT WITNESSES AND COUNSEL FOR THE
11 DEFENSE MAY CROSS-EXAMINE THEM.

12 FOLLOWING THE GOVERNMENT'S CASE, THE
13 DEFENDANT MAY, IF HE WISHES, PRESENT WITNESSES WHOM THE
14 GOVERNMENT MAY CROSS-EXAMINE. AFTER ALL THE EVIDENCE IS
15 IN, THE ATTORNEYS WILL PRESENT THEIR CLOSING ARGUMENTS
16 TO YOU TO SUMMARIZE AND INTERPRET THE EVIDENCE FOR YOU.
17 THEREAFTER, THE COURT WILL INSTRUCT YOU ON THE LAW AND
18 THEN YOU WILL DELIBERATE ON YOUR VERDICT.

19 ONE THING THAT I WILL TELL YOU IN CASE
20 YOU WONDER, WE MAY -- IT MAY BE NECESSARY FOR THE
21 ATTORNEYS AND ME TO GO TO SIDEBAR. WE DO THIS NOT
22 BECAUSE WE ARE TRYING TO HIDE ANYTHING FROM YOU, BUT
23 OFTEN THERE ARE ISSUES OF EVIDENCE AND I WANT TO PERMIT
24 THE ATTORNEYS TO ARGUE THEIR RESPECTIVE SIDES BEFORE THE
25 COURT MAKES A DETERMINATION AS TO WHETHER OR NOT THE

1 EVIDENCE IS GOING TO BE ADMITTED. SO JUST KEEP IN MIND
2 THAT WE ARE NOT TRYING TO HIDE ANYTHING FROM YOU.

3 AND LASTLY, AS YOU WILL SEE, YOU
4 WILL -- WHEN YOU ENTER THIS BUILDING AND YOU COME TO THE
5 COURTROOM, YOU DO SO IN THE PRESENCE PERHAPS OF THE
6 ATTORNEYS AND THE PARTIES INVOLVED IN THIS CASE. THEY
7 WILL BE INSTRUCTED NOT TO HAVE ANY CONVERSATION WITH
8 YOU, AND THE REASON FOR THAT IS OBVIOUS. THEY
9 ARE -- AGAIN, THEY ARE NOT TRYING TO BE UNFRIENDLY, THEY
10 ARE JUST BEING -- HAVE BEEN INSTRUCTED BY THE COURT THAT
11 THEY SHOULD NOT HAVE ANY CONVERSATIONS WITH YOU.

12 NOW WE WILL GET STARTED. TODAY IS A
13 LITTLE UNUSUAL SCHEDULE-WISE. I WILL ASK THAT YOU BE
14 HERE AT 9:30 EVERY DAY. WE WILL TAKE A LUNCHEON RECESS
15 12:30, 1:00 O'CLOCK. WE WILL TAKE A BREAK IN THE
16 MORNING AND A BREAK IN THE AFTERNOON AND WE WILL GO
17 UNTIL 4:30 OR 5:00 O'CLOCK. IF ANYONE HAS TO LEAVE IN
18 ORDER TO MAKE CONNECTIONS FOR A TRAIN OR A BUS THAT GOES
19 OUTSIDE OF PHILADELPHIA, LET MY COURT OFFICER KNOW AND
20 THEY WILL COMMUNICATE THAT TO ME. IF YOU NEED TO HAVE A
21 BREAK AT ANY TIME OTHER THAN WHAT I MENTIONED, RAISE
22 YOUR HAND AND WE WILL TRY TO BREAK AS SOON AS POSSIBLE.
23 WITH THAT, WE WILL GET STARTED.

24 I WILL HEAR FROM THE GOVERNMENT.

25 MS. NEWTON: THANK YOU, YOUR HONOR.

1 STEALING. STEALING FROM A MUSEUM.
2 STEALING A PIECE OF A 2,000-YEAR-OLD STATUE FROM THE
3 FRANKLIN INSTITUTE. THAT'S WHAT THIS CASE IS ABOUT.

4 MEMBERS OF THE JURY, AS YOU HEARD
5 EARLIER, I AM ASSISTANT UNITED STATES ATTORNEY
6 K.T. NEWTON; AND TOGETHER WITH FBI SPECIAL AGENT SARAH
7 CARDONE AND JAKE ARCHER, WE REPRESENT THE UNITED STATES
8 OF AMERICA IN THIS CASE IN THE PROSECUTION OF MICHAEL
9 ROHANA FOR BREAKING AND STEALING THE THUMB OF A FIGURE
10 KNOWN AS THE CAVALRYMAN, A 2,000-YEAR-OLD TERRACOTTA OR
11 POTTERY OR CLAY SOLDIER THAT WAS ON LOAN FROM CHINA TO
12 THE FRANKLIN INSTITUTE IN DECEMBER OF 2017.

13 WE ARE CHARGING MICHAEL ROHANA WITH TWO
14 CRIMES. THE FIRST OF THOSE CRIMES IS THAT HE STOLE AN
15 OBJECT OF CULTURAL HERITAGE, THIS THUMB FROM THE
16 CAVALRYMAN, FROM THE FRANKLIN INSTITUTE ON
17 DECEMBER 21ST, 2017. AND THE SECOND CRIME WE ARE
18 CHARGING HIM WITH IS THAT AFTER HE STOLE IT, FROM
19 DECEMBER 21, 2017 UNTIL JANUARY 13, 2018, HE CONCEALED
20 THAT STOLEN PROPERTY.

21 NOW, YOU ARE GOING TO HEAR IN THIS CASE
22 EVIDENCE OF HOW MICHAEL ROHANA STOLE THAT CAVALRYMAN
23 THUMB. YOU ARE GOING TO SEE VIDEO SURVEILLANCE FROM THE
24 FRANKLIN INSTITUTE. YOU ARE GOING TO HEAR TESTIMONY
25 FROM THE PEOPLE WHO WERE WITH MICHAEL ROHANA ON

1 DECEMBER 21ST. YOU ARE ALSO GOING TO HEAR FROM THE FBI
2 AGENTS WHO RECOVERED THE CAVALRYMAN'S THUMB FROM
3 MR. ROHANA ON JANUARY 13, 2018 AT HIS HOME IN BEAR,
4 DELAWARE; AND YOU ARE GO TO SEE EVIDENCE FROM
5 MR. ROHANA'S CELL PHONE OF THINGS THAT HE, HIMSELF,
6 TYPED OUT DURING THIS TIME PERIOD.

7 WELL, WHAT IS THAT EVIDENCE GOING TO
8 SHOW? ON DECEMBER 21ST, 2017, MICHAEL ROHANA WENT TO A
9 SCIENCE AFTER-HOURS EVENT AT THE FRANKLIN INSTITUTE.
10 THESE ARE ADULT-ONLY EVENTS IN WHICH ACTIVITIES ARE
11 CREATED BY THE FRANKLIN INSTITUTE; BEER AND WINE AND A
12 MIXED DRINK IS SERVED; AND PEOPLE CAN COME AND SEE THE
13 DIFFERENT EXHIBITS THAT ARE THERE IN THE MAIN PART OF
14 THE MUSEUM, GO TO THE EXHIBITS THAT SOME OF YOU MAY HAVE
15 BEEN TO BEFORE, SUCH AS THE HEART OR THE BRAIN.

16 BUT THE SPECIAL EXHIBITS AT THE FRANKLIN
17 INSTITUTE ARE NOT OPENED DURING THESE AFTER-HOURS
18 EVENTS, AND THAT NIGHT THE SPECIAL EXHIBIT, THE
19 TERRACOTTA WARRIORS OF THE FIRST EMPEROR, WAS NOT OPEN.

20 THIS PARTICULAR SPECIAL EVENT WAS
21 DECEMBER 21ST, SO RIGHT BEFORE CHRISTMAS, AND IT WAS
22 CALLED AN UGLY SWEATER PARTY.

23 MICHAEL ROHANA AND HIS FRIENDS LEFT
24 DELAWARE, DRIVING TO -- UP TO PHILADELPHIA TOGETHER AND
25 THEY WERE ENJOYING THEMSELVES, HAVING SOME DRINKS IN THE

1 CAR WHEN THEY CAME UP. THEY GET TO THE FRANKLIN
2 INSTITUTE ABOUT 7:30, ABOUT WHEN THE PARTY -- THE PARTY,
3 THE EVENT STARTS. AND THE GROUP DOES NOT STAY TOGETHER
4 ALL NIGHT.

5 MICHAEL ROHANA, ALONG WITH TWO OF HIS
6 FRIENDS, GO TO DIFFERENT ACTIVITIES AT THE SCIENCE
7 AFTER-HOURS EVENT. THEY GO TO THE PLANETARIUM AND THEY
8 HEAR MUSIC. THEY GO TO ANOTHER LOCATION WHERE THERE IS
9 MUSIC AND DANCING, THEY GO TO A LOCATION WHERE THEY'RE
10 USING 3-D GLASSES, AND THEY GO TO VISIT AND CLIMB UP IN
11 THE BRAIN EXHIBIT.

12 BUT THEN MICHAEL ROHANA DECIDES TO DO
13 SOMETHING BY HIMSELF, SOMETHING HE IS NOT SUPPOSED TO
14 DO. HE DECIDES TO GO PAST A BARRIER STRETCHED ACROSS A
15 RAMP THAT, YOU KNOW IS CLOSED, AND THAT RAMP LEADS TO
16 THE TERRACOTTA WARRIOR EXHIBIT. HE DECIDES TO GO UP THE
17 RAMP. HE GETS TO THE CLOSED DOORS OF THE EXHIBIT, AND
18 HE DECIDES TO GO IN. WHEN HE GETS INSIDE THAT EXHIBIT,
19 IT IS DARK, BUT HE DECIDES TO GO IN FURTHER.

20 AND HE GOES IN, AND THEN HE DECIDES TO
21 TAKE A VIDEO OF HIMSELF WITH ONE OF THE TERRACOTTA
22 WARRIORS. NOW, THESE WARRIORS ARE ON PLATFORMS AND THEY
23 ARE PROTECTED BY ROPES BECAUSE THEY ARE 2,000-YEAR-OLD
24 FRAGILE TERRACOTTA, OR POTTERY, STATUES. BUT MICHAEL
25 ROHANA DECIDES TO STEP OVER THAT ROPE TO GO NEXT TO THE

1 WARRIOR AND TO LEAN AGAINST IT TO TAKE A VIDEO OF
2 HIMSELF WITH THE TERRACOTTA WARRIOR.

3 AND THEN HE DECIDES THAT HE SHOULD INVITE
4 SOME OF HIS FRIENDS TO COME UP AND SEE THIS, TOO. SO HE
5 CALLS HIS FRIEND WILEY MAHER. AND HE MEETS WILEY MAHER
6 AND WILEY'S GIRLFRIEND, AND HE LEADS THEM BACK UP THE
7 RAMP AND LEADS THEM INTO THIS CLOSED EXHIBIT.

8 ONCE THEY GET IN, MR. MAHER'S GIRLFRIEND
9 THINKS THIS IS NOT A GOOD IDEA AND SHE LEAVES.
10 MR. ROHANA AND MR. MAHER, USING THEIR CELL PHONES AS
11 FLASHLIGHTS, WALK AROUND THE TERRACOTTA EXHIBIT. AND
12 THEN MR. MAHER DECIDES TO LEAVE, BUT MR. ROHANA DECIDES
13 TO STAY.

14 SO BY HIMSELF, HE DECIDES HE STILL WANTS
15 TO BE IN THIS EXHIBIT OF THESE TERRACOTTA WARRIORS. AND
16 WHILE HE IS THERE, HE ONCE AGAIN IGNORES THE ROPES,
17 IGNORES THE PLATFORM TO PROTECT THESE WARRIORS. AGAIN
18 CLIMBS OVER THE ROPE AND AGAIN CLIMBS ONTO THE PLATFORM,
19 AND THIS TIME, PUTS HIS ARM AROUND ONE OF THE WARRIORS
20 AND TAKES A PHOTO OF HIMSELF WITH HIS CELL PHONE. IN
21 OTHER WORDS, HE IS TAKING A SELFIE WITH THIS ANCIENT
22 WARRIOR IN THAT CLOSED EXHIBIT.

23 BUT MICHAEL ROHANA ISN'T DONE. HE HASN'T
24 YET DONE ENOUGH. SO HE DECIDES THEN -- THAT HE GOES
25 OVER TO ANOTHER TERRACOTTA WARRIOR KNOWN AS THE

1 CAVALRYMAN. AND HE LEANS OVER THAT PLATFORM, OVER THAT
2 ROPE, AND HE BREAKS THE THUMB OFF THE TERRACOTTA
3 WARRIOR. HE BREAKS IT, HE TAKES IT, AND HE PUTS IT IN
4 HIS POCKET.

5 AND THEN HE DECIDES TO LEAVE THE EXHIBIT,
6 GOES BACK DOWN THE RAMP, AND RUNS TO REJOIN HIS FRIENDS.
7 TEN MINUTES LATER, WHILE STILL AT THE FRANKLIN
8 INSTITUTE, MICHAEL ROHANA IS DOING A GOOGLE SEARCH IN
9 HIS PHONE: TERRACOTTA WARRIOR.

10 A FEW MINUTES AFTER THAT, HE SHOWS HIS
11 FRIEND WILEY MAHER THE THUMB THAT HE HAD STOLEN, TAKES
12 IT OUT OF HIS POCKET AND SHOWS IT TO HIM. WELL, HE AND
13 HIS FRIENDS STAY A LITTLE BIT LONGER AT THE FRANKLIN
14 INSTITUTE. THEY LOOK AT ANOTHER EXHIBIT. WHEN THE
15 EVENT IS OVER, ABOUT 10 O'CLOCK, THEY GET BACK IN THE
16 CAR AND THEY HEAD BACK TO DELAWARE.

17 WHILE THEY ARE HEADING BACK TO DELAWARE,
18 MICHAEL ROHANA AGAIN PULLS OUT THE TERRACOTTA WARRIOR
19 THUMB THAT HE STOLE AND SHOWS IT TO PEOPLE THAT WERE IN
20 THE CAR. THEY GET BACK TO DELAWARE. MR. ROHANA IS
21 DROPPED OFF WITH HIS FRIENDS, AND HE DRIVES BACK HOME TO
22 HIS HOME IN BEAR, DELAWARE.

23 NOW, AFTER THAT, WHAT DOES MICHAEL ROHANA
24 DO? THE NEXT DAY, DOES HE CALL THE FRANKLIN INSTITUTE
25 TO SAY, I HAVE THIS THUMB I SHOULD NOT HAVE, I NEED TO

1 GET IT BACK? DOES HE ANONYMOUSLY SEND IT BACK TO THE
2 MUSEUM BECAUSE HE IS REALIZING -- HE IS THINKING, I
3 SHOULDN'T HAVE THIS? DOES HE LET ANYBODY IN LAW
4 ENFORCEMENT KNOW WHAT HE DID? NO, HE DOESN'T. HE KEEPS
5 THE THUMB.

6 THE FRANKLIN INSTITUTE DETERMINED --
7 LEARNS THAT THE THUMB IS MISSING FROM THIS WARRIOR AND
8 THEY CONTACT THE FBI. AND ON JANUARY 13, 2018, THE FBI
9 LEARN OR DETERMINE THAT IT WAS MICHAEL ROHANA THAT HAD
10 STOLEN THE TERRACOTTA WARRIOR THUMB. AND THEY GO TO HIS
11 HOME IN BEAR, DELAWARE.

12 AND THEY ASK MICHAEL ROHANA, DO YOU HAVE
13 ANYTHING YOU WANT TO TURN OVER TO THE FBI? HE IS
14 CAUGHT.

15 HE SAYS, YES, A FINGER FROM A MUSEUM.
16 AND HE TAKES THE FBI UP INTO HIS BEDROOM, OPENS A DESK
17 DRAWER, AND THAT'S WHERE HE HAS BEEN CONCEALING THE
18 TERRACOTTA WARRIOR THUMB FOR THAT PERIOD OF TIME.

19 NOW, WE ALSO HAVE TO PROVE TO YOU WHAT
20 THE TERRACOTTA WARRIOR THUMB IS, THAT IT IS AN OBJECT OF
21 CULTURAL HERITAGE. AND WE CAN DO THAT IN ONE OF TWO
22 WAYS: ONE, WE PROVE TO YOU THAT THIS PARTICULAR OBJECT
23 IS OVER 100 YEARS OLD AND IS WORTH MORE THAN \$5,000; OR
24 TWO, WE CAN PROVE THAT IT'S WORTH OVER \$100,000.

25 YOU ARE GOING TO HEAR FROM WITNESSES FROM

1 CHINA ABOUT THE TERRACOTTA WARRIOR AND ABOUT THIS
2 PARTICULAR WARRIOR, THE CAVALRYMAN; HOW THESE WARRIORS
3 WERE DISCOVERED IN 1974 IN PIECES FROM THE MAUSOLEUM OF
4 EMPEROR QIN SHI HUANG, WHO WAS THE FIRST EMPEROR OF
5 CHINA.

6 YOU'LL LEARN THAT HE IS CONSIDERED THE
7 FOUNDING FATHER OF CHINA, AND THAT AT HIS TOMB, AROUND
8 HIS TOMB, THERE WAS A BURIED ARMY OF TERRACOTTA
9 WARRIORS, LIFE-SIZE POTTERY STATUES OF WARRIORS, ALL
10 WITH DIFFERENT EXPRESSIONS, DIFFERENT RANKS, AND
11 THESE -- BECAUSE THEY HAD BEEN IN THE GROUND FOR OVER
12 2,000 YEARS BECAUSE THEY DATE BACK TO 2006, 2021 B.C. --
13 WERE IN THE GROUND, AND THEY HAVEN'T -- THEY WERE IN
14 FRAGMENTS.

15 AND YOU WILL HEAR ABOUT HOW
16 ARCHEOLOGISTS, FROM 1974 UP UNTIL THE PRESENT TIME, ARE
17 STILL RESTORING THESE WARRIORS. AND IN 1976, 1977, THIS
18 PARTICULAR WARRIOR, THE CAVALRYMAN, WAS RESTORED. AND
19 YOU WILL HEAR ABOUT HOW IT'S DONE, HOW ALL OF THE PIECES
20 ARE TAKEN, THEY ARE LOOKED AT, THEY ARE CLEANED, AND
21 DETERMINED WHICH FIGURE THEY BELONG TO AND THEY BUILD
22 THE FIGURE BACK UP. AND ONE OF THESE FIGURES THAT THEY
23 WERE ABLE TO BUILD BACK UP COMPLETELY -- SOME PIECES
24 MISSING BUT FILLING IN -- BUT COMPLETELY WAS THE
25 CAVALRYMAN. YOU WILL HEAR THAT THE CAVALRYMAN, FOR

1 CHINA, IS A NATIONAL TREASURE. IT IS A CLASS ONE RELIC
2 BECAUSE IT'S COMPLETE, IT'S WELL-PROPORTIONED, IT HAS A
3 VERY VIVID EXPRESSION, A VERY VIVID FACE AND BEARING.

4 AND YOU WILL LEARN THAT THIS CAVALRYMAN
5 IS THE ONE THAT IS SEEN IN PHOTOGRAPHS THROUGHOUT THE
6 WORLD. IT'S ONE OF TWO CAVALRYMEN THAT GOES OUT ON
7 EXHIBIT AROUND THE WORLD. YOU WILL HEAR THAT THERE'S
8 ONLY SIX CAVALRYMEN THAT HAVE BEEN UNCOVERED COMPLETELY
9 AND THAT TWO OF THEM ARE CONSIDERED CLASS ONE, AND THIS
10 IS ONE OF THEM. AND YOU WILL LEARN THAT WITHOUT THE
11 THUMB, THIS CAVALRYMAN NOW CANNOT GO OUT ON EXHIBIT
12 BECAUSE IT'S NO LONGER CONSIDERED TO BE COMPLETE.

13 YOU WILL ALSO HEAR THAT -- FROM EXPERTS
14 WHO WILL TALK ABOUT, WELL, WHAT'S THE VALUE OF THE
15 THUMB? YOU WILL LEARN THAT THIS CAVALRYMAN WAS INSURED
16 FOR FOUR-AND-A-HALF MILLION DOLLARS, AND THAT IN CHINESE
17 ART -- ASIAN ART, BUT CHINESE ART IN PARTICULAR, AND IN
18 PARTICULAR FOR THE TERRACOTTA WARRIORS, HANDS AND
19 FINGERS ARE VERY IMPORTANT, THAT MANY OF THE DIFFERENT
20 TYPES OF WARRIORS ALL HAVE SPECIFIC DIFFERENT HAND
21 POSITIONS.

22 GIVEN THAT IMPORTANCE AND GIVEN THIS
23 FOUR-AND-A-HALF MILLION-DOLLAR TERRACOTTA WARRIOR, YOU
24 WILL LEARN FROM AN EXPERT APPRAISER THAT THE THUMB IS
25 VALUED AT \$150,000, BECAUSE THAT'S THE LOSS TO THE

1 CAVALRYMAN FROM HAVING THE THUMB GONE. SO THAT IS WHAT
2 THE VALUE OF THE THUMB IS.

3 NOW, YOU WILL HEAR FROM DEFENSE EXPERTS,
4 AND THEY WILL VALUE THIS THUMB AT \$500 OR \$1,000. IT IS
5 UP TO YOU TO DECIDE WHAT EVIDENCE THAT YOU ACCEPT AND
6 YOU BELIEVE.

7 YOU ARE ALSO GOING TO HEAR WHAT MICHAEL
8 ROHANA DID AND DID NOT DO AFTER HE STOLE THE CAVALRYMAN
9 THUMB. HE DIDN'T TURN IT BACK TO THE FRANKLIN
10 INSTITUTE. HE ONLY TURNED IT OVER WHEN HE WAS CAUGHT,
11 WHEN THE FBI CAME TO HIS HOME.

12 BUT WHAT HE DID DO FROM DECEMBER 22ND
13 UNTIL JANUARY 2ND WAS CONTINUE TO DO GOOGLE SEARCHES:
14 TERRACOTTA WARRIOR, FRANKLIN INSTITUTE, FRANKLIN
15 INSTITUTE TERRACOTTA WARRIOR, MUSEUM SURVEILLANCE,
16 STEALING, JAIL TIME. THOSE ARE THE KINDS OF THINGS HE
17 WAS LOOKING AT AFTER HE STOLE THIS.

18 AND THEN AFTER JANUARY 2ND, PERHAPS
19 THINKING NOBODY HAD COME TO HIM AT THAT POINT, NO ONE
20 HAD DISCOVERED THAT IT WAS HIM, HIS GOOGLE SEARCHES
21 STOPPED. BUT UNTIL THAT TIME, FOR THREE WEEKS -- NOT
22 THE FIRST DAY, NOT THE FIRST WEEK, NOT THREE WEEKS -- HE
23 DID NOT GET THAT THUMB BACK TO THE FRANKLIN INSTITUTE,
24 AND HE CONTINUED TO DO THIS TYPE OF SEARCH FOR WHAT HE
25 HAD TAKEN.

1 NOW, IN THIS CASE, WHEN THE EVIDENCE IS
2 CLOSED AND YOU HAVE HEARD ALL OF THE EVIDENCE, I WILL
3 HAVE THE OPPORTUNITY TO COME BACK AND TALK TO YOU AGAIN.
4 AND AT THAT TIME, I WILL ASK YOU TO FIND MICHAEL ROHANA
5 GUILTY OF TWO CRIMES: ONE, THE THEFT OF THE CAVALRYMAN
6 THUMB, AN OBJECT OF CULTURAL HERITAGE; AND TWO, THE
7 CONCEALMENT OF THAT THUMB IN HIS HOME IN BEAR, DELAWARE.

8 THANK YOU.

9 THE COURT: YOU MAY PROCEED.

10 MS. MACEOIN: THANK YOU, YOUR HONOR.

11 WAITING FOR SOME TECHNOLOGY.

12 GOOD AFTERNOON, LADIES AND GENTLEMEN.

13 REMEMBER, WE ARE NOT HERE TO FIND OUT OR TO DETERMINE
14 WHETHER MICHAEL ROHANA'S ACTIONS WERE RIGHT OR WRONG.
15 THEY WERE WRONG. AND WE ARE NOT HERE TO DETERMINE
16 WHETHER THE TERRACOTTA WARRIORS OR THIS ARCHEOLOGICAL
17 DISCOVERY ARE IMPORTANT. THEY ABSOLUTELY ARE. THAT'S
18 NOT WHY WE ARE HERE.

19 WE ARE HERE BECAUSE THE GOVERNMENT HAS
20 CHOSEN TO CHARGE THIS CRIME IN FEDERAL COURT. THEY
21 CHARGED MR. ROHANA WITH THEFT OF MAJOR ARTWORK. AND IN
22 ORDER TO DO THAT, THEY HAVE TO SHOW NOT ONLY THAT HE
23 STOLE SOMETHING, BUT THAT THE OBJECT THAT HE STOLE WAS
24 WORTH AT LEAST \$5,000 IF IT'S 100 YEARS OLD, OR AT LEAST
25 \$100,000.

1 THIS IS THE ITEM THAT WAS TAKEN, LADIES
2 AND GENTLEMEN. THIS IS THE THUMB.

3 NOW, AS MS. NEWTON JUST MENTIONED, THIS
4 THUMB WAS PART OF MANY FRACTURED PIECES FOUND IN THE
5 GROUND IN XI'AN, CHINA IN THE 1970S. ALL OF THE
6 TERRACOTTA WARRIORS, EXCEPT FOR ONE OUT OF SEVERAL
7 THOUSAND -- ALMOST 7,000 WERE FOUND IN PIECES LIKE YOU
8 SEE HERE. THIS IS A PICTURE FROM THE EXCAVATION SITE IN
9 CHINA.

10 THEY WERE SORTED AND EVENTUALLY GLUED
11 BACK TOGETHER FOR CERTAIN ONES TO BE WHOLE AGAIN. AND
12 IN THIS CASE, LADIES AND GENTLEMEN, CHINA IS WHOLE. THE
13 THUMB HAS BEEN RETURNED.

14 AND WHEN IT BROKE, IT DIDN'T BREAK THE
15 CLAY, IT BROKE WHERE THE GLUE HAD PREVIOUSLY ATTACHED
16 THIS THUMB TO THE HAND IN THE PAST. IT'S THE GLUE THAT
17 BROKE, NOT THE CLAY. CHINA HAS THE THUMB, AND THEY ARE
18 WHOLE.

19 SO WHAT WE HAVE TO DETERMINE IN THIS CASE
20 IS WHETHER THIS ITEM RIGHT HERE IS WORTH OVER \$5,000.
21 AND AS YOU WILL HEAR, IT'S NOT WORTH ANYWHERE NEAR
22 \$5,000 STANDING ALONE; AND SO YOUR VERDICT HAS TO BE NOT
23 GUILTY.

24 MS. NEWTON JUST TOLD YOU ABOUT THE
25 FRANKLIN INSTITUTE, AND MANY OF YOU ARE FAMILIAR WITH IT

1 ANYWAY. IT'S A MUSEUM; BUT ON THAT PARTICULAR NIGHT IT
2 WAS A NIGHT CLUB. THIS IS A FLYER FROM THE EVENT AND
3 SEVERAL OTHER EVENTS THAT HAPPENED THERE. AS YOU WILL
4 SEE, THEY PROMOTE RAISING MONEY FOR THE FRANKLIN
5 INSTITUTE BY SELLING ALCOHOL AND INVITING PEOPLE TO COME
6 AND EXPLORE THE MUSEUM, TO PLAY, TO RUN AROUND THIS
7 INTERACTIVE MUSEUM. AND THAT NIGHT THEY CERTAINLY HAD A
8 PARTY. THEY SOLD OVER 840 TICKETS AND SOLD OVER \$7,000
9 IN ALCOHOL. THEY INVITED PEOPLE TO RUN AND COME AND
10 PLAY, AND THAT'S EXACTLY WHAT THEY DID. AND NOT
11 SURPRISINGLY, SOME PEOPLE WENT INTO PLACES IN THE MUSEUM
12 THEY WERE NOT SUPPOSED TO GO TO. WHY DO I SAY "NOT
13 SURPRISINGLY"? BECAUSE THE FRANKLIN INSTITUTE HAD AN
14 OUTRAGEOUS AND EGREGIOUS LAPSE OF SECURITY THAT NIGHT.

15 MS. NEWTON: YOUR HONOR, OBJECTION.

16 THE COURT: THIS IS ARGUMENT.

17 MS. MACEOIN: THEY BLEW IT, LADIES AND
18 GENTLEMEN BECAUSE, BY ALL ACCOUNTS, THIS IS A VERY
19 VALUABLE EXHIBIT AS FAR AS THE ARCHAEOLOGICAL HISTORY OF
20 IT. AS MS. NEWTON JUST DESCRIBED, CERTAIN PIECES TOUR
21 THE WORLD AND ARE DISPLAYED IN MUSEUMS. AND THAT NIGHT,
22 THEY LEFT IT WIDE OPEN IN THE MIDDLE OF THIS PARTY.

23 THE SECURITY GUARD LEFT AT THE EXACT TIME
24 THAT THEY WERE PUTTING OUT THE ALCOHOL TO SERVE TO THE
25 PARTY GOERS, AND NO SECURITY GUARD RETURNED TO THE

1 EXHIBIT. THEY HAD STANCHIONS NEAR THE EXHIBIT BUT THEY
2 WEREN'T ARRANGED IN A WAY TO BLOCK THE ENTRANCE, AND
3 PEOPLE WENT THROUGH ONE BY ONE. AND THE MOST BASIC
4 SECURITY MEASURE THAT ANYONE CAN DO, LOCKING A DOOR,
5 THEY DIDN'T EVEN DO THAT.

6 SO THIS WASN'T A CASE OF ART THEFT WHERE
7 PEOPLE PICKED LOCKS OR BROKE WINDOWS OR SURVEILLED THE
8 PLACE OR CONTRAVENED ELECTRONIC SECURITY MEASURES TO GET
9 INSIDE. THEY WALKED IN. THAT'S WHAT HAPPENED HERE.

10 AND MICHAEL ROHANA TOOK THE THUMB. HE
11 PUT IT IN HIS POCKET AND HE LEFT, AND HE WENT WITH HIS
12 FRIENDS BACK TO BEAR, DELAWARE. THAT'S NOT IN DISPUTE.
13 HE KEPT THE ITEM IN HIS HOUSE UNTIL HE COULD TURN IT
14 OVER TO THE FBI. THAT'S NOT IN DISPUTE.

15 SO YOU MUST BE ASKING YOURSELVES, WELL,
16 IF HE'S NOT AN ART THIEF, WHY ON EARTH WOULD SOMEONE IN
17 THEIR RIGHT MIND TAKE THIS? THIS IS IN AND OF ITSELF IS
18 NOT SOMETHING THAT HAS MUCH ARTISTIC VALUE TO SIT ON A
19 SHELF. WHY WOULD SOMEONE TAKE THAT?

20 WELL, THE ANSWER IS MICHAEL ROHANA WAS
21 NOT IN HIS RIGHT FRAME OF MIND THAT NIGHT. HE WAS
22 DRUNK. HE WAS DRINKING WITH HIS FRIENDS. THIS IS WHAT
23 WAS GOING ON THAT NIGHT. IT WAS AN UGLY CHRISTMAS
24 SWEATER PARTY. HERE IS MICHAEL AND HIS FRIEND WILEY
25 POSING WITH SANTA CLAUS. HERE IS MICHAEL AND HIS

1 FRIENDS ALL IN THEIR UGLY SWEATERS, HANGING OUT THAT
2 NIGHT. THAT'S WHAT WAS GOING ON. AND LIKE MANY PEOPLE,
3 THEY WERE RUNNING AROUND THE MUSEUM; THEY WERE PARTYING,
4 ACTING LIKE 20-YEAR OLDS. YOU ARE GOING TO SEE A LITTLE
5 MONTAGE OF VIDEOS FROM HIS CELLPHONE. YOU SEE THEM
6 DRINKING IN THE CAR ON THE WAY THERE. YOU SEE THEM
7 DRINKING, POURING SHOTS IN EACH OTHER'S MOUTHS. LIKE
8 MANY PEOPLE IN THE MUSEUM, YOU WILL SEE THEM GOOFING OFF
9 IN THE PLANETARIUM. SEE WHAT KINDS OF THINGS HE DID ON
10 THE PHONE. HE IS BROADCASTING THIS ON SNAPCHAT. HERE'S
11 PEOPLE DANCING, DRINKING. THIS IS NOT REALLY THE MUSEUM
12 THAT WE EXPECT. THIS WAS A SPECIAL EVENT WHERE THERE
13 WAS ALCOHOL. YOU WILL SEE HIM GOOFING OFF WITH HIS
14 FRIEND WILEY HERE. THAT'S WHAT WAS GOING ON THAT NIGHT,
15 LADIES AND GENTLEMEN. 20-YEAR-OLDS HAVING FUN.

16 SO YOU MAY BE ASKING YOURSELF, WELL, IF
17 HE TOOK THE THUMB, HOW CAN MICHAEL BE NOT GUILTY OF
18 THIS? WELL, AGAIN, YOU ARE NOT HERE TO DETERMINE
19 WHETHER HE TOOK IT. YOU ARE HERE TO DETERMINE WHETHER
20 HE COMMITTED THE THEFT OF MAJOR ARTWORK AND HE DIDN'T,
21 AND HERE IS WHY: MICHAEL DIDN'T HAVE THE INTENT TO
22 STEAL. THIS WAS NOT A SITUATION WHERE HE SCOPED OUT THE
23 MUSEUM, SCOPED OUT THE EXHIBIT, KNEW EXACTLY WHAT THESE
24 THINGS WERE WORTH AND HOW HE COULD GET SOMETHING FOR IT
25 IF HE SOLD IT. HE IN NO WAY EVEN KNEW THAT THE EXHIBIT

1 WOULD HAVE BEEN OPEN THAT NIGHT. NOBODY DID. HE WAS
2 DRUNK. HE MADE A TERRIBLE, REGRETTABLE MISTAKE THAT WAS
3 OUTSIDE OF HIS NORMAL CHARACTER FOR HONESTY.

4 AND AGAIN, IT'S THE THUMB STANDING ALONE
5 THAT HAS TO HAVE A VALUE OF MORE THAN \$100,000 OR IF
6 IT'S OVER ONE HUNDRED YEARS OLD, \$5,000. IT'S NOT THE
7 VALUE OF THE WHOLE STATUE. AS MS. NEWTON JUST
8 DESCRIBED, THE STATUES AND THIS TRAVELING EXHIBIT WERE
9 INSURED FOR \$4 AND 1/2 MILLION, THIS PARTICULAR ONE AS
10 SEVERAL OTHERS WERE. EVEN THOUGH THEY HAD ALL BEEN
11 RESTORED AND GLUED BACK TOGETHER IN VARIOUS WAYS. IT
12 HAS TO BE THE ITEM -- THE VALUE OF THE THUMB ITSELF IN
13 ORDER TO CONVICT MICHAEL ROHANA OF THEFT OF MAJOR
14 ARTWORK.

15 IT'S NOT JUST ME TELLING YOU THIS. YOU
16 ARE GOING TO HEAR FROM SEVERAL EXPERTS. TWO EXPERTS
17 THAT YOU ARE GOING TO HEAR FROM, THAT WE WILL CALL IN
18 OUR CASE, LARK MASON AND MARLEY RASKONIC, WILL TELL YOU
19 THAT THE VALUE OF THIS THUMB -- THEY'RE EXPERTS IN
20 CHINESE ART -- THE VALUE OF THIS THUMB WAS WAY LESS THAN
21 \$5,000.

22 AND AS MS. NEWTON JUST DESCRIBED, YOU ARE
23 ALSO GOING TO HEAR FROM ONE OF THEIR EXPERTS. THIS IS
24 AN EXPERT, MICHAEL COHN, WHO WAS HIRED ORIGINALLY BY THE
25 FRANKLIN INSTITUTE AFTER THEY FOUND OUT THAT IT WAS

1 MISSING AND GOT IT BACK FROM THE FBI. HE CAME UP WITH
2 ONE NUMBER ABOUT THE LOSS OF THE VALUE AND THEN SEVERAL
3 WEEKS LATER ISSUES A DIFFERENT REPORT AT THE BEHEST OF
4 THE UNITED STATES ATTORNEY'S OFFICE, WHICH COMES UP WITH
5 A DIFFERENT NUMBER. AND YOU WILL HAVE THREE PEOPLE,
6 THREE EXPERTS TESTIFY TO YOU THAT MR. COHN GOT IT WRONG.

7 NOW, IT'S CRITICALLY IMPORTANT IN THIS
8 CASE BECAUSE MICHAEL IS NOT CHARGED WITH SIMPLE THEFT OR
9 CRIMINAL MISCHIEF OR VANDALISM. THAT IS A CASE FOR
10 ANOTHER COURTROOM IN PHILADELPHIA COUNTY DOWN THE
11 STREET. WE ARE HERE IN FEDERAL COURT ON THE -- ON THE
12 CHARGE OF THEFT OF MAJOR ARTWORK. AGAIN, IT'S TITLE 18,
13 UNITED STATES CODE SECTION 668, AND IT HAS A DEFINITION
14 OF AN OBJECT OF CULTURAL HERITAGE THAT HAS A MONETARY
15 VALUE ATTACHED TO IT THAT SIMPLY IS NOT PROVEN HERE AND
16 IT DOES NOT EXIST, BECAUSE THAT -- THE MONETARY VALUE OF
17 THAT THUMB IS WORTH WAY LESS THAN \$5,000.

18 SO I TALKED TO YOU A LITTLE BIT ABOUT HOW
19 MICHAEL HAS A CHARACTER OF BEING HONEST. YOU WILL HEAR
20 ABOUT MICHAEL. HE WAS 23 YEARS OLD WHEN THIS HAPPENED.
21 HE IS 24 YEARS OLD TODAY. HE IS HERE TODAY AND YOU WILL
22 HEAR FROM THEM, HIS PARENTS, CHRISTOPHER AND MICHELLE
23 ROHANA. YOU WILL HEAR FROM HIS OLDER BROTHER,
24 CHRISTOPHER JUNIOR. HIS SISTER LISA, HER HUSBAND;
25 FAMILY FRIENDS, HIS BOSS, HIS FRIENDS THAT WERE WITH HIM

1 THAT NIGHT. THEY WILL ALL SAY HE IS AN HONEST KID. HE
2 HAS NEVER DONE ANYTHING LIKE THIS. HE DOES NOT STEAL
3 AND HE DOES NOT LIE.

4 MICHAEL'S ACTIONS HAVE CAUSED A LOT OF
5 ANGUISH FOR HIMSELF AND FOR HIS FAMILY. IT'S A TRULY
6 REGRETTABLE DECISION THAT HE WISHES HE COULD GO BACK IN
7 TIME AND UNDO, BUT HE CANNOT. WHEN THE FBI CAME TO HIS
8 HOUSE, HE LET THEM IN. HE WAS SCARED. HE TOLD HIS DAD
9 EVERYTHING THAT HAPPENED THAT NIGHT. HE HAD PREVIOUSLY
10 TOLD HIS MOM BECAUSE HE WAS SO WORRIED ABOUT WHAT WOULD
11 HAPPEN. HE WOKE UP THE NEXT DAY AND HE WAS LIKE, WHAT
12 DID I DO?

13 THIS IS AN INCREDIBLE, REGRETTABLE
14 DECISION. SO, YES, HE GOGGLED LIKE ALL OF US WOULD IF
15 YOU FIND YOURSELF IN A PICKLE. YOU GO AND YOU LOOK ON
16 THE INTERNET, TERRACOTTA WARRIORS, FRANKLIN INSTITUTE.
17 OH MY GOD, WHAT HAVE I DONE? STEALING, WHAT CAN HAPPEN?
18 AND BEFORE HE COULD FIGURE IT OUT, HE WENT TO HIS MOM
19 AND SAID MOM, I NEED YOUR HELP AND SHE -- HE WENT TO THE
20 PERSON HE LOVES AND HE TRUSTS AND SHE SAID, MICHAEL, I
21 STAND WITH YOU. WE WILL FIGURE THIS OUT. SHE HERSELF
22 WAS UNDER A LOT OF PRESSURE AT THAT TIME.

23 BUT BEFORE THEY COULD FIGURE OUT WHAT TO
24 DO, THE FBI SHOWED UP. MICHAEL LET THEM IN. LED THEM
25 UP TO HIS ROOM. SHOWED THEM EXACTLY WHERE HE KEPT THE

1 THUMB. HE DIDN'T TRY TO SELL THIS THING. HE KEPT IT IN
2 HIS DESK DRAWER. HE ALSO HANDED OVER HIS CELLPHONE AND
3 SAID HERE, TAKE MY CELL PHONE. YES, YOU CAN SEARCH IT.
4 HERE IS MY PASSCODE. THAT'S HOW THE GOVERNMENT OBTAINED
5 ALL THESE CLIPS AND ANY EVIDENCE IN HIS GOOGLE SEARCHES
6 THAT YOU HEARD ABOUT. MICHAEL HANDED IT OVER TO THEM.
7 WHY? HE IS NOT A CRIMINAL. HE IS NOT AN ART THIEF. HE
8 WAS A DRUNK KID WHO MADE A STUPID DECISION, A
9 REGRETTABLE DECISION, AND THAT IS WHY HE IS NOT GUILTY.

10 THANK YOU.

11 THE COURT: GOVERNMENT, CALL YOUR FIRST
12 WITNESS.

13 MS. NEWTON: YOUR HONOR, THE GOVERNMENT
14 CALLS MR. DARRYL WILLIAMS.

15 MS. HENRY: YOUR HONOR, WE MOVE FOR
16 SEQUESTRATION.

17 THE COURT: THE WITNESSES IN THIS MATTER
18 WILL BE SEQUESTERED.

19 LADIES AND GENTLEMEN, JUST SO THAT YOU
20 UNDERSTAND WHAT SEQUESTRATION IS, IT MEANS THAT THE
21 WITNESSES ARE NOT TO BE IN THE ROOM WHILE -- ONE WITNESS
22 IS NOT TO BE IN THE ROOM WHILE THE OTHERS ARE TESTIFYING
23 AND THEY WILL BE CALLED IN ONE-BY-ONE. THE REASON FOR
24 THAT IS OBVIOUS.

25 THE DEPUTY CLERK: STAND UP AND PLEASE

1 RAISE YOUR RIGHT HAND AND STATE YOUR NAME FOR THE
2 REPORT.

3 THE WITNESS: DARRYL WILLIAMS.

4 (GOVERNMENT WITNESS SWORN.)

5 DIRECT EXAMINATION

6 BY MS. NEWTON:

7 Q. GOOD AFTERNOON. COULD YOU TELL THE JURY YOUR
8 FULL NAME?

9 A. SURE. DARRYL NATHANIEL WILLIAMS.

10 Q. DO YOU CURRENTLY WORK FOR THE FRANKLIN
11 INSTITUTE?

12 A. I DO.

13 Q. OKAY. AND WHAT IS YOUR POSITION AT THE FRANKLIN
14 INSTITUTE?

15 A. SENIOR VICE-PRESIDENT OF SCIENCE AND EDUCATION.

16 Q. COULD YOU TELL THE JURY WHAT THAT TITLE MEANS?

17 A. SURE. SO I AM BASICALLY RESPONSIBLE FOR THE
18 MISSION OF THE FRANKLIN INSTITUTE. I OVERSEE ALL
19 ASPECTS OF SCIENCE AND EDUCATION PROGRAMS FOR THE
20 FRANKLIN INSTITUTE.

21 Q. HOW LONG HAVE YOU HAD THIS POSITION AT THE
22 FRANKLIN INSTITUTE?

23 A. JUST ABOUT A YEAR.

24 Q. AND PRIOR TO COMING TO THE FRANKLIN INSTITUTE,
25 WHERE WERE YOU?

1 A. I WAS AT TUFTS UNIVERSITY IN BOSTON.

2 Q. WHAT WAS YOUR POSITION THERE?

3 A. I WAS DEAN OF UNDERGRADUATE EDUCATION FOR THE
4 SCHOOL OF ENGINEERING AND ALSO FACULTY IN CHEMICAL
5 ENGINEERING.

6 Q. HOW LONG DID YOU HOLD THAT POSITION?

7 A. ABOUT FIVE YEARS.

8 Q. NOW RETURNING TO YOUR POSITION AT THE FRANKLIN
9 INSTITUTE, MR. WILLIAMS, HAVE YOU -- I AM GOING TO HAND
10 YOU --

11 MS. NEWTON: YOUR HONOR, IF I MAY
12 APPROACH?

13 THE COURT: YES.

14 MS. NEWTON: THANK YOU.

15 BY MS. NEWTON:

16 Q. IF I COULD ASK YOU TO TURN FOR ME,
17 THERE'S -- IT'S A BIG EXHIBIT BOOK IN FRONT OF YOU, AND
18 IF YOU COULD TURN TO THE TAB THAT HAS BEEN MARKED TAB
19 NO. 3. I BELIEVE THERE IS TWO PAGES.

20 AND TELL ME IF YOU RECOGNIZE WHAT'S
21 THERE?

22 A. YES, IT'S MY BUSINESS CARD.

23 Q. IS WHAT'S SHOWN HERE ACCURATELY SHOWS WHAT IS ON
24 YOUR BUSINESS CARD?

25 A. YES.

1 MS. NEWTON: YOUR HONOR, THE GOVERNMENT
2 MOVES TO ADMIT GOVERNMENT EXHIBIT 3.

3 THE COURT: YES.

4 MS. NEWTON: AND SEEKS PERMISSION TO
5 PUBLISH TO THE JURY.

6 THE COURT: YES.

7 (GOVERNMENT EXHIBIT 3 ADMITTED INTO
8 EVIDENCE.)

9 BY MS. NEWTON:

10 Q. OKAY. IT'S ALSO GOING TO COME UP ON THE SCREEN
11 IN FRONT OF YOU, DR. WILLIAMS, HOPEFULLY, AND ALSO IN
12 FRONT OF THE JURY IN JUST A MOMENT. BUT WHILE WE ARE
13 WAITING FOR IT TO COME UP, I WILL ASK YOU A QUESTION
14 ABOUT IT.

15 ON THE -- ONE SIDE OF THE BUSINESS CARD
16 HAS YOUR INFORMATION, YOUR CONTACT INFORMATION AND YOUR
17 TITLE AND NAME; IS THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. OKAY. AND ON THE OTHER SIDE OF THE BUSINESS
20 CARD, WHAT DO WE SEE THERE?

21 A. THIS IS OUR MISSION STATEMENT.

22 Q. COULD YOU READ FOR THE JURY WHAT THE MISSION
23 STATEMENT IS?

24 A. SURE. IT SAYS IN THE SPIRIT OF INQUIRY AND
25 DISCOVERY EMBODIED BY BENJAMIN FRANKLIN, THE MISSION OF

1 THE FRANKLIN INSTITUTE IS TO INSPIRE A PASSION FOR
2 LEARNING ABOUT SCIENCE AND TECHNOLOGY.

3 Q. COULD YOU TELL THE MEMBERS OF THE JURY
4 WHAT -- HOW THE FRANKLIN INSTITUTE ACCOMPLISHES THAT
5 GOAL OF MEETING THE MISSION OF INSPIRING A PASSION ABOUT
6 LEARNING ABOUT SCIENCE AND TECHNOLOGY?

7 A. SURE. SO SINCE OUR FOUNDING IN 1824, THIS HAS
8 BEEN OUR MISSION. WE DO A NUMBER OF PROGRAMS, MUSEUM
9 PROGRAMS THAT FOCUS ON REACHING A BROAD NUMBER OF
10 AUDIENCES, FROM CHILDREN AND FAMILIES ALL THE WAY TO
11 ADULT AUDIENCES. AND SO THAT COULD BE PROGRAMMING SUCH
12 AS OUR SCIENCE AFTER HOURS PROGRAM, WHICH REACHES ADULT
13 AUDIENCES, OUR SPEAKER SERIES, AS WELL AS OUR NIGHT
14 SKIES AND OBSERVATORY.

15 Q. NOW YOU MENTIONED SCIENCE AFTER HOURS PROGRAMS.
16 COULD YOU TELL THE JURY, WHAT ARE THOSE PROGRAMS?

17 A. SURE. SO IT WAS BORNE OUT OF OUR -- WHAT IS
18 CALLED THE PHILADELPHIA SCIENCE FESTIVAL, WHICH IS A
19 PROGRAM WHICH RUNS FOR A WEEK, AND THE WHOLE PURPOSE OF
20 THE FESTIVAL IS REALLY TO ENGAGE THE PHILADELPHIA REGION
21 IN ALL THINGS RELATED TO SCIENCE. SO WE WORK WITH A
22 NUMBER OF ALMOST 200 PARTNERS TO INITIATE THE PROGRAM.

23 AND SO WE DO A NUMBER OF PROGRAMS THAT
24 REACH FAMILIES AND REACH YOUNG PEOPLE AS WELL AS ADULT
25 AUDIENCES. AND SO SCIENCE AFTER HOURS IS ONE OF OUR

1 PROGRAMS THAT REACHES AUDIENCES THAT ARE 21 AND OVER.

2 Q. WHY 21 OR OVER?

3 A. THAT'S REALLY KIND OF WHAT WE DEFINE AS OUR
4 ADULT AUDIENCE.

5 Q. AND AT THE SCIENCE AFTER HOURS EVENT, WHAT TYPE
6 OF THINGS TAKE PLACE?

7 A. SO ALL OF OUR EXHIBITS ARE OPEN AND IT'S ALSO AN
8 OPPORTUNITY FOR OUR MUSEUM PROGRAM STAFF TO DO OUR
9 EDUCATION PROGRAMS, WHICH RANGE IN ALL KINDS OF THINGS
10 RELATED TO THE SCIENCE OF THAT PARTICULAR THEME. AGAIN,
11 ALL OF OUR 11 EXHIBITS ARE OPEN. WE ALSO HAVE -- SERVE
12 ALCOHOL FOR PURCHASE AND THIS IS AN OPPORTUNITY LIKE
13 MANY CULTURAL INSTITUTIONS IN THE PHILADELPHIA AREA TO
14 REACH ADULT AUDIENCES.

15 Q. YOU MENTIONED THAT THE EXHIBITS OF THE FRANKLIN
16 INSTITUTE ARE OPEN DURING THE SCIENCE AFTER HOURS
17 EVENTS?

18 A. CORRECT.

19 Q. ARE SPECIAL EXHIBITS THAT ARE BEING HELD AT THE
20 FRANKLIN INSTITUTE ALSO OPEN DURING A SCIENCE AFTER
21 HOURS EVENT?

22 A. THEY ARE NOT. IT'S ONLY OUR PERMANENT EXHIBITS
23 THAT ARE OPEN.

24 Q. WHAT ARE THE PERMANENT EXHIBITS THAT ARE AT THE
25 FRANKLIN INSTITUTE?

1 A. SO EVERYBODY IS FAMILIAR -- HOPEFULLY EVERYBODY
2 IS FAMILIAR, IF YOU ARE FAMILIAR WITH THE FRANKLIN
3 INSTITUTE, WITH THE GIANT HEART. WE ALSO HAVE OUR BRAIN
4 EXHIBIT. WE HAVE OUR -- WHAT CALLED SIR ISAAC'S LOFT.
5 SPORTSZONE. OUR CLIMATE EDUCATION EXHIBITION. SO
6 AGAIN, ALL OF THE PERMANENT EXHIBITIONS, THE TRAIN,
7 THINGS OF THAT NATURE.

8 Q. NOW, THE FRANKLIN INSTITUTE, DO YOU ALSO HAVE A
9 PERMANENT COLLECTION OF OBJECTS THAT THE MUSEUM ITSELF
10 OWNS AND DISPLAYS?

11 A. CORRECT.

12 Q. COULD YOU GIVE THE JURY AN EXAMPLE OF SOME OF
13 THE COLLECTION OF THE FRANKLIN INSTITUTE?

14 A. SURE. SO WE HAVE SOME -- ALL OF THE WRIGHT
15 BROTHERS COLLECTION, WHICH IS ALL OF THEIR DRAWINGS AND
16 THEIR TEST FOILS FOR DESIGNING THE WINGS FOR THE FLYER
17 THAT THEY CREATED. WE HAVE SOME OF BENJAMIN FRANKLIN'S
18 ARTIFACTS, HIS BIFOCALS, THE LIGHTING ROD THAT HE USED
19 FOR HIS EXPERIMENTS, I BELIEVE A SWORD THAT HE WAS GIVEN
20 WHILE HE WAS EMBASSADOR TO FRANCE, AND SOME OF HIS
21 JOURNALS AND OTHER DOCUMENTS.

22 Q. DOES THE FRANKLIN INSTITUTE HAVE REGULAR HOURS
23 IN WHICH THE PUBLIC CAN COME IN AND VIEW THE
24 NORMAL -- THE EXHIBITS YOU HAVE DESCRIBED, AS WELL AS
25 WHAT ITEMS IN THE COLLECTION?

1 A. YES. SO WE ARE OPEN FROM 9:30 TO 5:00, PRETTY
2 MUCH 365, WITH THE EXCEPTION OF CHRISTMAS AND NEW
3 YEAR'S.

4 Q. OKAY. SO YOU SAY "365," WE ARE TALKING EVERY
5 DAY?

6 A. EVERY DAY, CORRECT.

7 Q. AND COULD YOU ALSO TELL THE JURY ABOUT THE
8 PEOPLE WHO COMPRISE THE STAFF AT THE FRANKLIN INSTITUTE?

9 A. YES. SO WE HAVE OUR MUSEUM EDUCATORS. WE HAVE
10 CURATORIAL STAFF. WE HAVE OUR OPERATIONS STAFF. WE
11 HAVE OUR DEVELOPMENT STAFF, WHICH HELPS US RAISE FUNDS
12 TO DO THE GREAT WORK THAT WE DO. WE HAVE SCIENTISTS ON
13 STAFF. SO WE ARE A VERY BROAD-BASED ORGANIZATION.

14 Q. WHERE IS THE FRANKLIN INSTITUTE LOCATED?

15 A. SO WE ARE LOCATED ON THE BENJAMIN FRANKLIN
16 PARKWAY. SO RIGHT AT THE FOOT OF THE PARKWAY ACROSS THE
17 STREET FROM THE BARNES AND THE LOGAN FOUNTAIN AND NEXT
18 TO THE ACADEMY OF NATURAL SCIENCES.

19 Q. NOW IN ADDITION TO THE EXHIBITS YOU HAVE
20 DESCRIBED, THE BRAIN, THE HEART AND ALSO WHAT IS IN YOUR
21 COLLECTION, DOES THE FRANKLIN INSTITUTE ALSO HOLD
22 SPECIAL EXHIBITS?

23 A. WE DO. SO WE ARE ONE OF THE LARGEST VENUES FOR
24 TRAVELING EXHIBITIONS IN THE REGION. AND SO EVERYTHING
25 FROM KING TUT, WHICH WAS ONE OF OUR BIG ARTIFACT

1 EXHIBITIONS, TO TITANIC, TO THE TERRACOTTA WARRIORS AND
2 MOST RECENTLY VIKINGS.

3 Q. HOW MANY PEOPLE VISIT THE FRANKLIN INSTITUTE
4 AVERAGE PER YEAR?

5 A. SO WE ARE CLOSE TO A MILLION VISITORS A YEAR.
6 WE ARE THE MOST-VISITED MUSEUM IN THE COMMONWEALTH AS
7 WELL IN THE TRI-STATE REGION OF NEW JERSEY, PENNSYLVANIA
8 AND DELAWARE.

9 MS. NEWTON: YOUR HONOR, I HAVE NO
10 FURTHER QUESTIONS.

11 THE COURT: ANY CROSS-EXAMINATION?

12 MS. HENRY: YES, YOUR HONOR.

13 CROSS EXAMINATION

14 BY MS. HENRY:

15 Q. HI, DR. WILLIAMS.

16 A. HOW ARE YOU?

17 Q. SO YOU SAID THAT -- WHEN YOU TALK ABOUT A
18 MILLION VISITORS TO THE MUSEUM IN A YEAR, THEY PAY A FEE
19 TO COME, RIGHT?

20 A. YES.

21 Q. OKAY. AND THE FEE IS HOW MUCH?

22 A. \$23 FOR ADULTS AND 19 FOR CHILDREN.

23 Q. OKAY. AND WE TALK ABOUT A MILLION VISITORS, ARE
24 YOU INCLUDING THE PEOPLE WHO COME FOR THE AFTER-HOURS
25 PARTIES?

1 A. I AM.

2 Q. OKAY. AND THE FEE FOR THE AFTER-HOURS PARTY,
3 YOU PAY A SEPARATE FEE, ANOTHER FEE FOR THAT; IS THAT
4 RIGHT?

5 A. CORRECT.

6 Q. OKAY. AND SO WHEN YOU HAVE THIS LECTURE SERIES
7 AT NIGHT, YOU DO NOT SERVE ALCOHOL, RIGHT?

8 A. WE DO NOT.

9 Q. AND SO WHEN YOU TALK ABOUT WANTING TO REACH
10 ADULTS AND EDUCATE ADULTS ABOUT SCIENCE, YOU DO NOT NEED
11 TO SERVE ALCOHOL TO DO THAT, RIGHT?

12 A. IT DEPENDS.

13 Q. WELL, LET ME ASK YOU THIS: YOU MAKE MONEY DOING
14 THE AFTER HOURS PARTY, RIGHT?

15 A. WE DO.

16 Q. OKAY. SO YOU GET -- FOR THE AFTER HOURS PARTY,
17 AS OPPOSED TO A LECTURE SERIES, YOU GET TO CHARGE
18 ANOTHER FEE, RIGHT?

19 A. RIGHT.

20 Q. OKAY. AND THAT'S WHAT? ANOTHER \$25 OR \$30?

21 A. AROUND THAT.

22 Q. OKAY. AND THAT'S FOR ABOUT TWO HOURS? HOW LONG
23 IS THE AFTER-HOURS PARTY?

24 A. FROM 7:00 TO 10:00.

25 Q. 7:00 TO 10:00, 3 HOURS. OKAY. SO YOU GET A FEE

1 FROM EVERYBODY FOR THAT AND THEN PEOPLE HAVE TO PAY FOR
2 THEIR DRINKS, RIGHT?

3 A. CORRECT.

4 Q. AND THEY HAVE TO PAY FOR FOOD?

5 A. CORRECT.

6 Q. OKAY. SO THIS IS A MONEY-MAKING ENTERPRISE FOR
7 THE FRANKLIN INSTITUTE. YOU MAKE MONEY ON THIS, RIGHT?

8 A. YES.

9 Q. AND YOU WOULD SAY IN APPROXIMATE, I THINK IN THE
10 INFORMATION I FOUND, IN 2017 YOU HAD ABOUT 18,000 PEOPLE
11 WHO CAME TO THE AFTER-HOURS PARTIES.

12 DOES THAT SOUND ABOUT RIGHT?

13 A. SOUNDS RIGHT.

14 Q. OKAY. SO ALL TOGETHER YOU GUYS MAKE ABOUT
15 HALF-A-MILLION DOLLARS A YEAR ON THAT?

16 A. ROUGHLY.

17 Q. AND YOU ARE STILL DOING THOSE PARTIES, RIGHT?

18 A. WE ARE.

19 Q. AND THEY HAVE DIFFERENT THEMES, LIKE SPEAKEASY
20 OR COSMOS, PROM, THINGS LIKE THAT, RIGHT?

21 A. CORRECT.

22 Q. OKAY.

23 MS. HENRY: I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ANY REDIRECT?

25 MS. NEWTON: YES, YOUR HONOR, THANK YOU.

1 REDIRECT EXAMINATION

2 BY MS. NEWTON:

3 Q. DR. WILLIAMS, WHEN YOU HAVE THE SCIENCE
4 AFTER-HOURS EVENTS, ARE THEY CONSIDERED TO BE IN
5 FURTHERANCE OF THE MISSION OF THE MUSEUM?

6 A. THEY ARE. AGAIN, AS I STATED EARLIER, IT'S A
7 WAY FOR US TO ENGAGE DIFFERENT AUDIENCES. SO OUR
8 PRIMARY AUDIENCE IS FAMILIES AND CHILDREN BUT WE ALSO
9 RECOGNIZE AS PART OF OUR MISSION THAT WE ARE TRYING TO
10 REACH BROAD AUDIENCES. SO LIKE OTHER CULTURAL
11 INSTITUTIONS IN THE CITY, SUCH AS THE BARNES MUSEUM OF
12 FINE ART, THE ACADEMY OF NATURAL SCIENCES AS WELL, WE
13 REACH OUR ADULT AUDIENCES AND WE DO SERVE ALCOHOL FOR
14 PURCHASE.

15 MS. NEWTON: NO FURTHER QUESTIONS, YOUR
16 HONOR.

17 MS. HENRY: MAY I JUST ASK ONE QUESTION,
18 YOUR HONOR?

19 THE COURT: YES.

20 RECROSS EXAMINATION

21 BY MS. HENRY:

22 Q. WHEN YOU ARE -- IN YOUR CAPACITY AS A MUSEUM,
23 YOU ARE LOANED ARTIFACTS BY THEIR --

24 MS. NEWTON: OBJECTION, YOUR HONOR.

25 BEYOND THE SCOPE OF REDIRECT.

1 THE COURT: SUSTAINED.

2 BY MS. HENRY:

3 Q. DO YOU TELL THE PEOPLE, THE OTHER PEOPLE WHEN
4 YOU HAVE THEIR ITEMS, THAT YOU ARE SELLING ALCOHOL?

5 MS. NEWTON: OBJECTION, YOUR HONOR.
6 BEYOND THE SCOPE OF REDIRECT.

7 THE COURT: IT IS SUSTAINED.

8 MS. HENRY: OKAY, THANK YOU.

9 THE COURT: YOU MAY STEP DOWN. THANK
10 YOU.

11 (WITNESS EXCUSED.)

12 THE COURT: YOUR NEXT WITNESS.

13 MS. NEWTON: YOUR HONOR, THE GOVERNMENT
14 CALLS SIOBHAN KEEFE.

15 THE DEPUTY CLERK: RAISE YOUR RIGHT HAND
16 AND STATE YOUR NAME FOR THE RECORD.

17 THE WITNESS: KATHLEEN SIOBHAN KEEFE.

18 (GOVERNMENT WITNESS SWORN.)

19 DIRECT EXAMINATION

20 BY MS. NEWTON:

21 Q. GOOD AFTERNOON, MS. KEEFE. COULD YOU TELL THE
22 JURORS YOUR FULL NAME?

23 A. KATHLEEN SIOBHAN KEEFE.

24 Q. AND WHERE DO YOU WORK?

25 A. THE FRANKLIN INSTITUTE.

1 Q. WHAT IS YOUR POSITION AT THE FRANKLIN INSTITUTE?

2 A. VICE-PRESIDENT OF FINANCE.

3 Q. AS VICE-PRESIDENT OF FINANCE, WHAT DOES YOUR JOB
4 INVOLVE?

5 A. MY JOB INVOLVES FINANCE, I.T., RISK MANAGEMENT
6 AND LEGAL REVIEW.

7 Q. AND WHEN YOU SAY "I.T.," WAS IT THE TECHNOLOGY
8 PART OR THE COMPUTER PART --

9 A. YES.

10 Q. -- OF THE FRANKLIN INSTITUTE?

11 AND DOES YOUR JOB INVOLVE THE REVIEW OF
12 CONTRACTS AND LOAN AGREEMENTS AND INSURANCE POLICIES?

13 A. YES.

14 Q. NOW, WHERE YOU WORK -- HOW LONG HAVE YOU BEEN
15 WORKING FOR THE FRANKLIN INSTITUTE?

16 A. NINE YEARS.

17 Q. HAVE YOU HAD THE SAME POSITION FOR ALL NINE
18 YEARS?

19 A. NO.

20 Q. WHAT DID YOU DO BEFORE YOU BECAME VICE-PRESIDENT
21 OF FINANCE?

22 A. I WAS THE DIRECTOR OF FINANCE.

23 Q. AND HOW LONG DID YOU HOLD THAT POSITION?

24 A. I BELIEVE IT WAS TWO YEARS.

25 Q. AND BEFORE THAT, WHAT DID YOU DO?

1 A. I ACTUALLY WORKED IN THE FOR-PROFIT WORLD AS A
2 GROUP CONTROLLER.

3 Q. NOW, DURING YOUR TIME AT THE FRANKLIN INSTITUTE
4 AS V.P. OF FINANCE, WERE YOU INVOLVED AT ALL IN -- WITH
5 THE LOAN OF THE TERRACOTTA WARRIOR OF THE FIRST EMPEROR
6 EXHIBIT FROM CHINA TO THE FRANKLIN INSTITUTE?

7 A. YES.

8 Q. AND WAS THERE A FORMAL LOAN AGREEMENT THAT WAS
9 ENTERED INTO BETWEEN REPRESENTATIVES IN CHINA AND THE
10 FRANKLIN INSTITUTE?

11 A. YES.

12 Q. NOW, IF YOU COULD TAKE A LOOK FOR ME -- THERE'S
13 A BIG BLACK BOOK IN FRONT OF YOU. AND IF YOU COULD TURN
14 TO WHAT'S BEEN MARKED -- I BELIEVE IT'S TAB NUMBER FOUR.
15 IT'S A PRETTY BIG DOCUMENT.

16 IF YOU CAN LOOK AT THAT FOR ME AND
17 THEN TELL ME IF YOU RECOGNIZE THIS.

18 A. YES. THIS IS THE LOAN AGREEMENT.

19 Q. SO THIS IS THE LOAN AGREEMENT BETWEEN THE
20 SHAANXI CULTURAL HERITAGE PROMOTION CENTER IN THE
21 PEOPLE'S REPUBLIC OF CHINESE AND THE FRANKLIN INSTITUTE,
22 CORRECT?

23 A. YES.

24 Q. WAS THERE ANOTHER PARTY THAT WAS ALSO INVOLVED
25 IN -- TO THIS AGREEMENT?

1 A. THE PACIFIC SCIENCE CENTER.

2 Q. OKAY. AND WHERE IS THE PACIFIC SCIENCE CENTER
3 LOCATED?

4 A. SEATTLE, WASHINGTON.

5 Q. AND TO YOUR KNOWLEDGE, DID THE -- DID THIS
6 EXHIBIT -- DID THE TERRACOTTA WARRIORS OF THE FIRST
7 EMPEROR EXHIBIT GO TO BOTH THE PACIFIC SCIENCE CENTER
8 AND THE FRANKLIN INSTITUTE?

9 A. YES.

10 Q. NOW, WERE YOU INVOLVED IN THE NEGOTIATION OR THE
11 SIGNING OF THIS LOAN AGREEMENT?

12 A. NO.

13 Q. DID YOU HAVE -- WERE YOU INVOLVED IN REVIEWING
14 THIS AGREEMENT BEFORE IT WAS SIGNED BY THE FRANKLIN
15 INSTITUTE?

16 A. YES.

17 Q. OKAY. NOW, IF YOU COULD TAKE A LOOK FOR ME
18 AT THE --

19 MS. NEWTON: YOUR HONOR, THE GOVERNMENT
20 MOVES TO ADMIT GOVERNMENT EXHIBIT 4.

21 THE COURT: YES.

22 (GOVERNMENT EXHIBIT 4 ADMITTED INTO
23 EVIDENCE.)

24 MS. NEWTON: AND PERMISSION TO PUBLISH TO
25 THE JURY?

1 THE COURT: YES.

2 BY MS. NEWTON:

3 Q. IF YOU CAN LOOK FOR ME ON THE VERY FIRST PAGE OF
4 THIS EXHIBIT. AND THIS IS -- IS THIS THE TITLE PAGE --

5 A. YES.

6 Q. -- FOR THE LOAN AGREEMENT?

7 AND IF WE COULD TURN TO ARTICLE TWO.

8 THE COURT: IS IT COMING UP?

9 MS. NEWTON: IS IT COMING UP FOR THE
10 JURORS?

11 THE JURY: NO.

12 MS. NEWTON: YOUR HONOR, I THINK FOR THIS
13 WITNESS, I CAN HAVE THE WITNESS TALK ABOUT IT.

14 THE COURT: OKAY. WE WILL INVESTIGATE
15 AND FIND OUT WHAT IS GOING ON.

16 MS. NEWTON: THANK YOU, YOUR HONOR.

17 BY MS. NEWTON:

18 Q. IF YOU COULD TURN FOR ME TO ARTICLE TWO.

19 WHAT IS THE TITLE FOR ARTICLE TWO? IT
20 SHOULD BE ABOUT PAGE THREE, I BELIEVE.

21 A. PARTIES TO THE EXHIBITION.

22 Q. AND ON THE FOLLOWING PAGE, ARE ALL OF THE
23 PARTIES TO THE EXHIBITION LISTED?

24 A. YES.

25 Q. WHO IS LISTED ON THE CHINESE SIDE OF THIS

1 AGREEMENT?

2 A. THE SHAANXI PROVISIONAL CULTURAL RELICS BUREAU
3 AND THE SHAANXI CULTURAL HERITAGE PROMOTION CENTER.

4 Q. AND WHO IS LISTED ON THE UNITED STATES PART OF
5 THE EXHIBIT?

6 A. THE FRANKLIN INSTITUTE AND THE PACIFIC SCIENCE
7 CENTER.

8 Q. IF YOU COULD TURN TO THE FOLLOWING PAGE,
9 ARTICLE THREE, WHAT IS ARTICLE THREE?

10 A. LOANS OF THE EXHIBITION.

11 Q. HOW MANY OBJECTS WERE PART OF THIS PARTICULAR
12 LOAN?

13 A. IT INDICATES 125 OBJECTS.

14 Q. AND IN CONNECTION WITH THIS LOAN AGREEMENT WITH
15 THE PEOPLE'S REPUBLIC OF CHINA, WITH THE SHAANXI
16 CULTURAL PROMOTION CENTER, WAS THERE ANY INSURANCE THAT
17 HAD TO BE OBTAINED TO GET THE OBJECTS FROM CHINA TO BOTH
18 SEATTLE, THE PACIFIC SCIENCE CENTER, AND THEN TO THE
19 FRANKLIN INSTITUTE?

20 A. YES.

21 Q. OKAY. AND IF YOU COULD TURN TO ARTICLE EIGHT,
22 WHICH I BELIEVE IS PAGE 22.

23 DO YOU SEE THAT?

24 A. YES.

25 Q. WHAT IS THE TITLE OF ARTICLE EIGHT?

1 A. INSURANCE AND LOANS.

2 Q. OKAY. AND BASICALLY, COULD YOU TELL THE JURY,
3 WHAT DOES ARTICLE EIGHT STATE ABOUT INSURANCE OF THE
4 LOANS FROM CHINA TO THE MUSEUMS IN THE UNITED STATES?

5 A. THAT WE ARE REQUIRED TO HAVE THE INSURANCE OF
6 THE LOANS. THEY SET THE VALUE OF THE INSURANCE.
7 WITHOUT HAVING READ IT BUT WITH MY UNDERSTANDING OF THE
8 CONTRACT, THEY SET THE VALUES AND WE -- THE INSURANCE
9 HAD TO BE IN BOTH ENGLISH AND CHINESE.

10 Q. AND DID THE FRANKLIN INSTITUTE AND THE PACIFIC
11 SCIENCE CENTER OBTAIN INSURANCE FOR THESE OBJECTS?

12 A. YES.

13 Q. NOW, IF YOU COULD TURN FOR ME -- I BELIEVE IT'S
14 TO THE -- PAGE 36. SO WE HAVE A PAGE 35 OF THE LOAN
15 AGREEMENT, AND THEN THERE'S A PAGE FOLLOWING IT.

16 DO YOU SEE THAT?

17 A. YES.

18 Q. OKAY. ON THE PAGES THAT COMPLETE GOVERNMENT
19 EXHIBIT 4, DO YOU KNOW WHAT THESE PAGES ARE?

20 A. THIS IS THE LIST OF ARTIFACTS THAT WERE BEING --
21 WITHIN THE SHOW, WITHIN THE EXHIBITION.

22 Q. AND WITH THIS LIST OF ARTIFACTS THAT IS BEING
23 EXHIBITED IN THE SHOW, WHAT INFORMATION IS BEING GIVEN
24 ABOUT THE ARTIFACTS?

25 A. IT PROVIDES THE NUMBERS -- A REFERENCE BY NAME;

1 CODE; CLASSIFICATION; THE DYNASTY, THE CHINESE DYNASTY;
2 WHAT IT'S MADE OUT OF; THE TYPES; HOW MANY OF THEM ARE;
3 THE SIZE; COLLECTED BY, WHO WAS THE COLLECTOR; A PHOTO;
4 AND THE INSURANCE VALUE.

5 Q. NOW, IF YOU GO DOWN TO THE BOTTOM OF THIS FIRST
6 PAGE ON THIS -- IT'S ENTITLED SCHEDULE OF CULTURAL
7 RELICS OF THE EXHIBITION TERRACOTTA WARRIORS OF THE
8 FIRST EMPEROR, CORRECT?

9 A. YES.

10 Q. OKAY. IF YOU GO DOWN TO THE LAST ENTRY ON THAT
11 FIRST PAGE, ENTRY NUMBER SEVEN, IS THE TITLE FOR THAT
12 ONE A CAVALRYMAN?

13 A. YES.

14 Q. AND IS THE COLLECTING CODE 002531?

15 A. YES.

16 Q. WHAT IS THE CLASS THAT'S LISTED FOR THIS
17 CAVALRYMAN?

18 A. I DON'T KNOW. IT SAYS FIRST CLASS, BUT I DON'T
19 KNOW WHAT THAT MEANS.

20 Q. AND THE DYNASTY, IS THAT LISTED AS QIN DYNASTY?

21 A. YES.

22 Q. ALL RIGHT. AND IS THERE -- ON THE FAR
23 RIGHT-HAND SIDE, IS THERE A VERY SMALL PHOTOGRAPH OF THE
24 OBJECT THAT'S THERE?

25 A. YES.

1 Q. AND IS THERE AN INSURANCE VALUE THAT IS LISTED
2 FOR THIS PARTICULAR OBJECT?

3 A. YES.

4 Q. WHAT IS THE INSURANCE VALUE THAT'S LISTED?

5 A. 4.5 MILLION.

6 Q. THE OTHER OBJECTS THAT ARE ALSO LISTED ON THIS
7 PAGE, ARE THEY ALL LISTED AS FIRST-CLASS OBJECTS?

8 A. YES.

9 Q. COULD YOU TELL THE JURY WHAT ARE THE OTHER
10 INSURANCE VALUES FOR JUST THE FIRST PAGE OF THE OBJECTS
11 THAT ARE LISTED HERE?

12 A. THEY RANGE FROM 5 MILLION DOWN TO 4.5 MILLION.

13 Q. JUST ONE MOMENT. IF YOU'D TURN TO PAGE 27 IN
14 THE LOAN AGREEMENT FOR ME.

15 DO YOU SEE THAT?

16 A. YES.

17 Q. WHAT IS -- THERE'S AN ARTICLE TEN.

18 WHAT IS THE TITLE OF ARTICLE TEN?

19 A. EXHIBITION FEE.

20 Q. WHAT WAS THE EXHIBITION FEE FOR THIS PARTICULAR
21 EXHIBITION?

22 A. \$900,000.

23 Q. OKAY. IS THAT SPLIT BETWEEN THE PACIFIC SCIENCE
24 CENTER AND THE FRANKLIN INSTITUTE?

25 A. YES, \$450,000 EACH.

1 Q. NOW, IF YOU COULD TURN FOR ME TO WHAT HAS BEEN
2 MARKED AS GOVERNMENT EXHIBIT 6. DO YOU SEE THAT?

3 A. YES.

4 Q. DO YOU RECOGNIZE THIS DOCUMENT?

5 A. THIS IS THE INSURANCE BINDER.

6 Q. IS THIS THE INSURANCE POLICY FOR THE TERRACOTTA
7 WARRIORS OF THE FIRST EMPEROR EXHIBIT?

8 A. YES.

9 MS. NEWTON: YOUR HONOR, THE GOVERNMENT
10 MOVES TO ADMIT GOVERNMENT EXHIBIT 6.

11 THE COURT: YES.

12 (GOVERNMENT EXHIBIT 6 ADMITTED INTO
13 EVIDENCE.)

14 BY MS. NEWTON:

15 Q. AND UNDER THIS INSURANCE POLICY, WERE EACH OF
16 THE OBJECTS INSURED AT THE VALUE THAT WAS SPECIFIED IN
17 THAT CULTURAL RELICS EVENT VALUE BILL?

18 A. YES.

19 MS. NEWTON: YOUR HONOR, I HAVE NO
20 FURTHER QUESTIONS.

21 CROSS-EXAMINATION

22 BY MS. HENRY:

23 Q. GOOD AFTERNOON, MA'AM.

24 A. GOOD AFTERNOON.

25 Q. SO YOU TESTIFIED THAT -- IN YOUR POSITION AS

1 VICE-PRESIDENT OF FINANCE, ABOUT TWO DIFFERENT PIECES OF
2 PAPERWORK RELATED TO THE LOAN OF THE TERRACOTTA WARRIOR
3 EXHIBIT, YES?

4 A. YES.

5 Q. AND WHEN WE SAY "LOAN," IT'S NOT LIKE THEY'RE
6 JUST LOANING THEM TO YOU. YOU GUYS ARE KIND OF RENTING
7 THEM, RIGHT? THEY'RE -- YOU'RE PAYING MONEY TO --

8 A. WE ARE PAYING MONEY, YES.

9 Q. OKAY. FINE. IT'S NOT LIKE LENDING YOU MY
10 PENCIL. IT'S A RENTAL AGREEMENT, RIGHT? OR A LOAN
11 AGREEMENT. DO YOU USE THE --

12 A. IT'S A LOAN.

13 Q. THE TERMS -- ARE --

14 A. THE TERMINOLOGY IS A LOAN AGREEMENT.

15 Q. OKAY. FINE. SO THE LOAN AGREEMENT THAT YOU
16 TALKED ABOUT, YOU DIDN'T DRAFT IT, BUT YOU REVIEWED IT,
17 RIGHT?

18 A. I READ IT, CORRECT.

19 Q. YOU READ IT.

20 AND IN READING IT, YOU DIDN'T ADVISE
21 AGAINST SIGNING IT, RIGHT?

22 A. CORRECT.

23 Q. OKAY. AND YOU, IN FACT, SAID, YOU KNOW, LOOKS
24 GOOD TO ME, ESSENTIALLY, YES?

25 A. ESSENTIALLY, YES.

1 Q. OKAY. WHO DID DRAFT IT?

2 A. IT WAS DRAFTED BY THE CHINESE.

3 Q. OKAY. AND YOU TALKED ABOUT THAT THERE WAS, YOU
4 KNOW, 100 AND SOMETHING ITEMS THAT WERE BEING LOANED,
5 YES?

6 A. YES.

7 Q. OKAY. AND THEN YOU TALKED ABOUT IN SECTION
8 EIGHT THAT THERE WERE VALUES THAT WERE SET, CORRECT?

9 A. CORRECT.

10 Q. OKAY. ARTICLE EIGHT.

11 AND YOU SAID THAT THE VALUES THAT WERE
12 SET FOR THESE ITEMS WERE DECIDED BY THE CHINESE, YES?

13 A. YES.

14 Q. SO THEY DECIDED HOW MUCH THE ITEMS WERE WORTH IN
15 THIS DOCUMENT, CORRECT?

16 A. YES.

17 Q. NOW, AND YOU -- FOR EXAMPLE, MOST OF THE FIGURES
18 THAT YOU REFERRED TO IN THE CHART, THE BIG -- THE BIG
19 ONES, THE BIG STATUES OF THE WARRIORS WERE VALUED AROUND
20 4.5 MILLION, GIVE OR TAKE, EACH?

21 A. PLUS OR MINUS, YES.

22 Q. OKAY. AND THE ONES THAT YOU REFERRED TO ON THE
23 PAGE WHERE YOU HAD A LIST OF ALL OF THE DIFFERENT
24 ONES -- LET ME JUST TAKE A LOOK AT THAT -- YOU TALKED
25 ABOUT THEY WERE ALMOST ALL -- LET ME GET TO THE RIGHT

1 PAGE. YOU JUST HAD IT IN FRONT OF YOU, I BELIEVE. LET
2 ME JUST MAKE SURE WE HAVE THE RIGHT ONE.

3 MS. HENRY: CAN WE GET THE SCREENS ON, OR
4 ARE THEY NOT WORKING?

5 THE DEPUTY CLERK: YOUR SIDE IS WORKING.

6 MS. HENRY: OKAY. OH, OUR SIDE IS
7 WORKING.

8 CAN YOU BRING UP D 22?

9 THE DEPUTY CLERK: THEY'RE NOT SHOWING.

10 MS. HENRY: THEY'RE NOT SHOWING? OH,
11 FINE.

12 THE DEPUTY CLERK: THERE YOU GO.

13 MS. HENRY: OKAY.

14 DO YOU GUYS HAVE IT ON YOUR SCREEN,
15 EVERYONE? OKAY. GREAT.

16 BY MS. HENRY:

17 Q. SO D 22, THIS IS THE FIRST PAGE THAT YOU TALKED
18 ABOUT, AND ON THE RIGHT-HAND SIDE ARE THE INSURANCE
19 VALUES: THE 500, 480, 400, 450, 450, 450, 450 --

20 A. YES.

21 Q. -- RIGHT?

22 OKAY. AND THOSE ARE NUMBERS FROM THE
23 CHINESE?

24 A. YES.

25 Q. AND WHEN YOU SIGNED OFF ON OR RECOMMENDED THAT

1 THIS LOAN AGREEMENT LOOKED GOOD TO YOU, YOU DIDN'T CHECK
2 TO SEE HOW MUCH THESE WERE INSURED FOR IN THE PAST, DID
3 YOU?

4 A. NO.

5 Q. OKAY. AND WERE YOU AWARE THAT THE UNITED
6 NATIONS, WHEN THESE FIRST WENT ON EXHIBITION IN 1985,
7 THEY VALUED THESE PARTICULAR STATUES AT ABOUT 350,000
8 U.S. DOLLARS?

9 A. NO.

10 Q. SO YOU DIDN'T DO ANYTHING TO VERIFY ANY VALUES?

11 A. NO.

12 MS. HENRY: CAN YOU TAKE THAT DOWN?

13 BY MS. HENRY:

14 Q. AND YOU SAID ONE OF THE DEALS UNDER THE LOAN
15 AGREEMENT IS THAT YOU HAD TO PROVIDE INSURANCE, YES?

16 A. YES.

17 Q. OKAY. AND SO YOU REVIEWED THE INSURANCE
18 INFORMATION ALSO?

19 A. YES.

20 Q. OKAY. BUT YOU WERE NOT A PARTY TO THAT, EITHER?

21 A. I DON'T UNDERSTAND THE QUESTION.

22 Q. YOU DIDN'T SIGN IT?

23 A. NO.

24 Q. OKAY. BEFORE I GET TO THE INSURANCE, HOW MANY
25 VISITORS WERE THERE TO THE TERRACOTTA WARRIOR EXHIBIT,

1 IF YOU KNOW?

2 A. OFF THE TOP OF MY HEAD, I DON'T KNOW.

3 Q. WOULD YOU CONSIDER IT TO BE SUCCESSFUL, A LOT OF
4 VISITORS CAME FOR THAT EXHIBIT?

5 A. YOU WOULD HAVE TO DEFINE "SUCCESSFUL."

6 Q. OKAY.

7 A. IF WE HAD A --

8 Q. WELL, DID IT -- DID IT MAKE MONEY? DID IT HELP
9 MAKE MONEY FOR THE FRANKLIN INSTITUTE?

10 A. IT MADE SOME.

11 Q. OKAY. SO THE INSURANCE POLICY IS BETWEEN AN
12 INSURANCE COMPANY CALLED PICC PROPERTY AND CASUALTY
13 COMPANY AND THE FRANKLIN INSTITUTE, CORRECT?

14 A. NOT TOTALLY.

15 Q. OKAY.

16 A. IT WAS PI- -- PICC WAS PART OF A SYNDICATE
17 THROUGH LLOYD'S OF LONDON.

18 Q. OKAY, FINE. AND THEN ALSO THE MUSEUM IN SEATTLE
19 WAS PART OF THAT?

20 A. YES.

21 Q. AND THERE WERE DIFFERENT PROVISIONS IN THE
22 INSURANCE PREMIUM, YES?

23 A. YES.

24 Q. OKAY.

25 MS. HENRY: COULD YOU BRING UP 23-014,

1 PLEASE?

2 BY MS. HENRY:

3 Q. AND UNDER THIS, THE INSURED WAS THE FRANKLIN
4 INSTITUTE, YES?

5 MS. NEWTON: WHAT -- WHAT'S THE TAG?

6 MS. HENRY: OH, 23-014.

7 THE WITNESS: WE WERE ONE OF THE
8 INSUREDS.

9 BY MS. HENRY:

10 Q. CORRECT. SO THE INSURER WOULD HAVE BEEN PICC
11 PROPERTY AND CASUALTY COMPANY, SHANGHAI BRANCH, AND
12 THEN --

13 MS. HENRY: ACTUALLY, COULD YOU TAKE THAT
14 DOWN FOR A SECOND? COULD YOU PUT UP 23-002?

15 BY MS. HENRY:

16 Q. CAN YOU SEE THAT?

17 A. MM-HMM.

18 Q. OKAY. CAN YOU JUST CALL OUT ON THE TOP, JUST
19 BECAUSE IT'S SMALL, WHERE IT SAYS "INSURER," PLEASE?

20 A. WHERE IS --

21 Q. IT'S RIGHT UNDER "TYPE." IT SAYS: PICC
22 PROPERTY AND CASUALTY INSURANCE.

23 I THINK SHE HAS A DIFFERENT DOCUMENT.

24 I'M SORRY. HOLD ON.

25 MAY I ASK THE COURT'S INDULGENCE.

1 OKAY. THANK YOU FOR YOUR PATIENCE. WE
2 ARE GOING TO GET BETTER AT THIS, I PROMISE.

3 BY MS. HENRY:

4 Q. SO AT THE TOP, YOU SEE IT SAYS THE INSURER?
5 INSURER, RIGHT?

6 A. YES.

7 Q. SO THAT'S THE INSURER. THAT'S THE -- THAT'S THE
8 PICC PROPERTY AND CASUALTY COMPANY, SHANGHAI BRANCH,
9 YES?

10 A. YES.

11 Q. OKAY. AND SO, THEN, NEXT IT SAYS --

12 MS. HENRY: IF YOU PULL OUT "INSURED."

13 OKAY.

14 BY MS. HENRY:

15 Q. AND THAT'S THE PACIFIC SCIENCE CENTER AND THE
16 FRANKLIN INSTITUTE AND/OR ALL LENDERS OR THEIR AGENTS,
17 RESPECTIVE RIGHTS INTEREST MAY APPEAR, HEREINAFTER KNOWN
18 AS THE INSURED. RIGHT?

19 SO WHEN THE CONTRACT TALKS ABOUT "THE
20 INSURED," IT'S TALKING ABOUT THE FRANKLIN INSTITUTE,
21 YES?

22 A. YES.

23 Q. OKAY. THANK YOU.

24 MS. HENRY: SO CAN YOU PLEASE BRING UP --
25 FURTHER ON IN THIS INSURANCE AGREEMENT, COULD YOU BRING

1 UP 23-014, PLEASE.

2 MS. NEWTON: YOUR HONOR, I ASK THAT MS.
3 HENRY COULD JUST TELL US WHAT PAGE OF THE --

4 MS. HENRY: OH, 13 --

5 MS. NEWTON: -- INSURANCE POLICY THAT
6 WE'RE LOOKING AT? THANK YOU.

7 MS. HENRY: I'M SORRY, PARDON ME. 13.

8 CAN YOU SEE -- IT WAS --

9 OKAY. COULD YOU PULL OUT THE CLAUSE ON
10 REASONABLE CARE, PLEASE?

11 MS. NEWTON: YOUR HONOR, COULD WE SEE YOU
12 AT SIDEBAR FOR A MOMENT, PLEASE?

13 THE COURT: YES.

14 (SIDEBAR DISCUSSION.)

15 MS. NEWTON: YOUR HONOR, WE HAVE FILED
16 OUR MOTION IN LIMINE ASKING THAT THE DEFENSE BE
17 PRECLUDED FROM ANY MENTION OF LAPSE IN SECURITY OR
18 BREACH IN SECURITY. THE COURT HAS NOT RULED ON IT YET,
19 BUT THEY CERTAINLY USED IT IN THEIR OPENING AND I
20 BELIEVE THAT'S WHERE MS. HENRY IS GOING NOW.

21 IT IS MY UNDERSTANDING THAT UNTIL THIS IS
22 RULED ON, WE ASKED THAT THE -- THAT THIS NOT BE
23 PERMITTED.

24 MS. HENRY: YOUR HONOR, THIS IS A PART OF
25 THE CONTRACT THAT WAS INTRODUCED. I SHOULD BE ABLE TO

1 ASK QUESTIONS ABOUT THE LANGUAGE OF THE CONTRACT IN THE
2 INSURANCE POLICY SHE JUST INTRODUCED, PLUS THERE WAS NO
3 MOTION. THERE WAS A MOTION TO PRECLUDE JURY
4 NULLIFICATION. WE ARE NOT --

5 MS. NEWTON: THE MOTION WAS TO PREVENT
6 ARGUMENT INTRODUCING EVIDENCE ABOUT A BREACH OF SECURITY
7 A LACK OF SECURITY. THE WORD "SECURITY" IS NOT RELEVANT
8 TO THE ISSUE IN THE CASE.

9 MS. MACEOIN: IT'S A WHOLE PACKET.

10 THE COURT: I AM GOING TO PERMIT IT.

11 MS. HENRY: THANK YOU.

12 (SIDEBAR CONCLUDED.)

13 MS. HENRY: CAN YOU JUST CALL OUT THE
14 SECTION ON REASONABLE CARE? THAT IS NOT COMING UP.

15 DOES ANYONE HAVE THAT -- NO ONE HAS IT ON
16 THEIR SCREENS YET?

17 IS IT US?

18 THE DEPUTY CLERK: YES.

19 MS. HENRY: OKAY. FINE. CAN YOU CALL UP
20 THE SECTION ON REASONABLE CARE, PLEASE?

21 OKAY. THANK YOU.

22 BY MS. HENRY:

23 Q. OKAY. SO THE INSURER, WHICH IS FRANKLIN
24 INSTITUTE, ACCORDING TO THIS, SAYS THAT, MUST TAKE ALL
25 REASONABLE STEPS TO PROTECT THE EXHIBITS AGAINST LOSS OR

1 DAMAGE AND TO KEEP THEM IN GOOD REPAIR AND CONDITION,
2 RIGHT? THAT'S PART OF THE INSURANCE AGREEMENT, CORRECT?

3 A. YES.

4 Q. OKAY.

5 MS. HENRY: CAN YOU TAKE THAT DOWN,
6 PLEASE?

7 COULD YOU BRING UP 23-034, PLEASE?

8 AND CALL OUT SECTION 9.

9 BY MS. HENRY:

10 Q. AND YOU ALSO AGREE IN THIS CONTRACT THAT ANY
11 PROTECTION PROVIDED FOR THE SAFETY OF ALL OF THE
12 PROPERTY INSURED, WHICH IS THE STATUES, RIGHT, THE
13 EXHIBIT?

14 A. YES.

15 Q. SHALL BE MAINTAINED IN GOOD ORDER THROUGHOUT THE
16 CURRENCY OF THIS POLICY AND SHALL BE IN USE AT ALL
17 RELEVANT TIMES AND THAT SUCH PROTECTION NOT BE WITHDRAWN
18 OR VARIED TO THE DETRIMENT OF THE INTERESTS OF THE
19 UNDERWRITERS WITHOUT THEIR CONSENT.

20 SO THAT'S PART OF THIS ARRANGEMENT ALSO,
21 RIGHT, THIS CONTRACT?

22 A. YES.

23 Q. THANK YOU.

24 MS. HENRY: I HAVE NO FURTHER QUESTIONS,
25 YOUR HONOR.

1 THE COURT: ANY REDIRECT?

2 MS. NEWTON: NO REDIRECT, YOUR HONOR.

3 THE COURT: THANK YOU, MRS. KEEFE.

4 YOUR NEXT WITNESS.

5 MS. NEWTON: YOUR HONOR, CAN WE SEE YOU
6 AT SIDEBAR FOR A MOMENT?

7 THE COURT: DO WE NEED THE STENOGRAPHER?

8 MS. NEWTON: I DON'T THINK SO, YOUR
9 HONOR.

10 (SIDEBAR DISCUSSION OFF THE RECORD.)

11 THE COURT: BECAUSE WE ARE HAVING
12 TECHNICAL DIFFICULTIES, WE ARE GOING TO RECESS UNTIL
13 TOMORROW MORNING. SO PLEASE BE HERE AT 9:30. DO NOT
14 DISCUSS WHAT YOU HAVE HEARD SO FAR AND HAVE A GOOD
15 NIGHT.

16 (JURY OUT.)

17 THE COURT: WE WILL TAKE A RECESS. WE
18 HAVE THE ATTORNEY FOR FRANKLIN INSTITUTE COMING AT 4:30.
19 SO WE WILL RECONVENE AT THAT TIME.

20 MS. NEWTON: YOUR HONOR, I'M SORRY. ONE
21 OTHER QUESTION. AND PERHAPS I AM JUST NOT
22 UNDERSTANDING, BUT I THOUGHT THE GOVERNMENT'S MOTION IN
23 LIMINE WITH RESPECT TO ARGUMENT OR EVIDENCE ABOUT BREACH
24 OF SECURITY, ABOUT LACK OF SECURITY, HAD NOT BEEN RULED
25 ON BY THE COURT. AND YES, IT'S JURY NULLIFICATION FROM

1 THE PERSPECTIVE THAT THE LACK OF SECURITY OR BREACH OF
2 SECURITY SIMPLY IS NOT RELEVANT TO WHETHER MR. ROHANA
3 STOLE OR DIDN'T STEAL THE THUMB. WHETHER THERE WERE 25
4 ARMED GUARDS AROUND OR WHETHER THERE WERE NO ARMED
5 GUARDS AROUND, THE THEFT IS STILL THE SAME. SO WE WOULD
6 RESPECTFULLY ASK FOR THE COURT TO RULE -- I DON'T
7 BELIEVE THAT THE DEFENSE EVER FILED A RESPONSE TO THAT
8 MOTION. SO WE WOULD ASK THE COURT TO RULE ON THAT
9 MOTION SO WE KNOW HOW WE CAN PROCEED FROM THIS POINT
10 FORWARD, PARTICULARLY GIVEN SINCE IT WAS MENTIONED
11 RATHER PROMINENTLY IN THE DEFENSE'S OPENING.

12 MS. MACEOIN: YOUR HONOR, I CAN RESPOND
13 TO THAT NOW. YOUR HONOR, CARE, CUSTODY AND CONTROL HAS
14 TO BE PROVEN IS ONE OF THE ELEMENTS OF THE GOVERNMENT'S
15 CASE IN THIS CASE. SECOND OF ALL, THE JURY SHOULD BE
16 ENTITLED TO HEAR EXACTLY WHAT WAS GOING ON THAT NIGHT.
17 THE GOVERNMENT AGAIN, HAS CHARGED WITH THEFT OF MAJOR
18 ARTWORK, IMPLYING THAT THIS IS AN INDIVIDUAL WHO BROKE
19 INTO A MUSEUM AND STOLE SOMETHING WITH THE INTENT TO
20 SELL IT, WHICH IS CLEARLY NOT THE CASE HERE.

21 THE COURT: THAT'S NOT -- THAT'S NOT THE
22 DEFINITION.

23 MS. MACEOIN: IT'S NOT, YOUR HONOR, BUT
24 THE JURY --

25 THE COURT: AND NOBODY HAS SAID THAT.

1 MS. MACEOIN: THE JURY HAS A RIGHT TO
2 HEAR THE ENTIRE CIRCUMSTANCES OF THAT NIGHT AND NOT JUST
3 PINPOINTING IT TO ONE MOMENT IN TIME. IT GOES TO
4 INTENT, FOR EXAMPLE, YOUR HONOR. BUT SECOND OF ALL,
5 THEY DO HAVE THE OBLIGATION TO PROVE CARE, CUSTODY AND
6 CONTROL.

7 THE COURT: TO THE EXTENT THAT THE
8 GOVERNMENT IS PRESENTING THE INSURANCE POLICY, THE COURT
9 HAS PERMITTED THE CROSS EXAMINATION IN THAT REGARD.

10 MS. NEWTON: ABSOLUTELY, YOUR HONOR.

11 THE COURT: BUT I THINK THAT THE GENERAL
12 OVERALL SECURITY MEASURES, UNLESS IT'S PRESENTED BY THE
13 GOVERNMENT, I DON'T KNOW THAT IT BECOMES RELEVANT IN HOW
14 THIS CASE IS GOING TO PROCEED.

15 MS. HENRY: YOUR HONOR, THE ONLY THING IS
16 THEY ARE GOING TO SHOW A BUNCH OF PARTS OF VIDEO TAPE.
17 WE HAVE OTHER PARTS OF THE VIDEO TAPE THAT THEY ARE NOT
18 GOING TO SHOW SO WE WILL ADDRESS THAT AT THE TIME, BUT
19 WE OF COURSE ASK TO BE ABLE TO -- FOR THE RULE OF
20 COMPLETENESS TO BE ABLE TO SHOW THE PARTS THAT WE WANT
21 TO SHOW OF THE SURVEILLANCE TAPE AND THEY CAN SHOW THE
22 PARTS OF THE SURVEILLANCE TAPE THAT THEY WANT TO SHOW.
23 IT HAS ALL BEEN TURNED OVER FROM THE GOVERNMENT, THE
24 AUTHENTICITY IS NOT IN QUESTION. AND THEY ARE CALLING
25 TWO DIFFERENT PEOPLE WHO ARE DIRECTORS OF SECURITY AS

1 WITNESSES, SO --

2 MS. NEWTON: NO, YOUR HONOR. THAT'S NOT
3 CORRECT.

4 MS. HENRY: MARK HARMON IS ON THEIR
5 WITNESS LIST, AS WELL AS EVA BYNOE, WHO IS A MANAGER OF
6 SAFETY AND SECURITY. SO THEY ARE CALLING TWO SECURITY
7 PEOPLE FROM THE FRANKLIN INSTITUTE, WHICH PUTS THAT I
8 THINK -- AND THEY ARE GOING TO TALK ABOUT THE SECURITY
9 AND THEY ARE GOING TO TALK ABOUT SURVEILLANCE TAPES AND
10 THEY ARE GOING TO SHOW SURVEILLANCE TAPES.

11 SO WE ARE JUST ASKING PERMISSION TO
12 QUESTION THEM ABOUT THE TAPES. QUESTION ABOUT THEIR
13 PROTOCOL AND SHOW OTHER TAPES IF THEY DIDN'T SHOW THE
14 PARTS THAT THE DEFENSE WISHES TO SHOW, AT LEAST IN CROSS
15 EXAMINATION.

16 MS. NEWTON: YOUR HONOR, THE GOVERNMENT
17 HAS NO OBJECTION, OF COURSE, TO SHOWING THE SURVEILLANCE
18 TAPES AND SHOWING OTHER PARTS OF THE TAPES, BUT TO
19 QUESTION THEM ABOUT THEIR PROTOCOL IS GETTING INTO THAT
20 AREA AGAIN OF LACK OF RELEVANCE BECAUSE IT HAS NOTHING
21 TO DO WITH MR. ROHANA'S INTENT TO STEAL OF WHETHER THERE
22 WAS A SECURITY GUARD THERE OR NOT. SO OUR POSITION IS
23 THE SAME.

24 WE CERTAINLY USE -- WE PROVIDED THE
25 SECURITY VIDEO. WE WOULD -- CERTAINLY ARE NOT OBJECTING

1 TO THE USE OF THE SECURITY VIDEO, BUT IN TERMS OF ANY
2 ARGUMENT WITH RESPECT TO A BREACH OF SECURITY OR LAPSE
3 OF SECURITY, THAT'S WHERE THE GOVERNMENT BELIEVES THAT
4 IS NOT RELEVANT AND NOT APPROPRIATE.

5 MS. HENRY: YOUR HONOR, I THINK THAT
6 IT'S -- THAT -- YOUR HONOR IS GOING TO INSTRUCT THE JURY
7 THAT THERE'S CIRCUMSTANTIAL EVIDENCE OF -- THAT THE
8 GOVERNMENT, TO PROVE INTENT, RIGHT, THEY HAVE TO PROVE
9 THAT -- THE JURY IS GOING TO HAVE TO LOOK TO THE
10 CIRCUMSTANTIAL EVIDENCE IN THE CASE TO SEE
11 WHAT -- WHETHER MR. ROHANA HAD THE INTENT TO STEAL AND
12 PERMANENTLY DEPRIVE THE MUSEUM OF THIS PIECE OF CLAY.
13 AND SO IN DECIDING WHETHER -- LOOKING AT WHAT THE
14 CIRCUMSTANTIAL EVIDENCE IS TO SEE WHAT WAS IN HIS MIND,
15 WHETHER THIS WAS AN ACT OF VANDALISM OR HE HAD A
16 SPECIFIC INTENT TO STEAL AND NEVER GIVE IT BACK, THE
17 CIRCUMSTANCES OF HOW HE GETS INTO THERE, AND, YOU KNOW,
18 CERTAINLY, THEY WOULD BE ARGUING IF IT WAS LOCKED AND
19 THEY HAD -- AND HE HAD TO SLIP DIFFERENT PLACES, THAT
20 THAT WOULD BE CIRCUMSTANTIAL EVIDENCE OF HIS INTENT TO
21 STEAL AND TO PERMANENTLY DEPRIVE.

22 AND SO, IN THE ALTERNATIVE, I THINK WE
23 SHOULD BE -- WE ARE NOT GOING TO GO TOO FAR WITH IT,
24 YOUR HONOR, BUT JUST BE ABLE TO ASK THESE QUESTIONS
25 ABOUT HOW -- WHAT THE ACCESSIBILITY WAS THAT NIGHT INTO

1 THIS EXHIBIT, BECAUSE IT IS RELEVANT TO HIS -- TO
2 CIRCUMSTANTIAL EVIDENCE OF HIS INTENT, AND THAT'S -- THE
3 GOVERNMENT HAS TO PROVE IN THIS CASE.

4 MS. NEWTON: THE GOVERNMENT IS NOT
5 DISPUTING THAT THE DOOR WAS NOT LOCKED FOR HIM TO GO IN.
6 SO THAT'S NOT -- THAT'S NOT AT ISSUE HERE. AND IT IS
7 NOTHING TO DO WITH HIS INTENT AS TO WHETHER THERE WAS A
8 SECURITY GUARD PRESENT OR NOT.

9 THE COURT: I THINK THAT'S THE ARGUMENT
10 OF BOTH SIDES. AGAIN, I THINK THAT THE SECURITY IS
11 IMPORTANT AND RELEVANT TO A CERTAIN EXTENT, BUT THE
12 EXHIBIT COULD HAVE BEEN WIDE OPEN AND IT STILL COULD
13 RESULT IN THE CHARGES IN THIS CASE. SO THE FACT THAT
14 THERE WAS A LAPSE IN SECURITY OR NOT A LAPSE IN SECURITY
15 IS NOT PROBATIVE OF WHETHER OR NOT THERE WAS -- THERE
16 WAS A CRIME COMMITTED HERE.

17 SO TO THE EXTENT YOU ARE CALLING PEOPLE
18 IN SECURITY, THE DEFENSE HAS THE RIGHT TO CROSS-EXAMINE
19 THOSE WITNESSES, AND AGAIN, I THINK IT'S TO A CERTAIN
20 POINT.

21 MS. NEWTON: UNDERSTOOD, YOUR HONOR.
22 CERTAINLY AS TO ANY AREA THAT THE GOVERNMENT ELICITS ON
23 DIRECT TESTIMONY, WE WOULD EXPECT CROSS EXAMINATION FROM
24 THE DEFENSE. BUT IF THE DEFENSE STARTS GOING INTO OTHER
25 AREAS THAT WE HAVE NOT DONE -- THAT IS NOT THE RECORD

1 FROM DIRECT EXAMINATION, OUR POSITION WOULD BE THAT THEY
2 SHOULD NOT BE ABLE TO GO FURTHER INTO THIS LAPSE OF
3 SECURITY OR BREACH OF SECURITY AREA, IF WE HAVE NOT
4 ADDRESSED IT IN ANY WAY.

5 FOR EXAMPLE, MR. MARK HARMON WILL TESTIFY
6 SIMPLY TO THERE ARE SURVEILLANCE VIDEOS. THESE ARE THE
7 SURVEILLANCE VIDEOS OF THAT NIGHT. SO WE HAVE HEARD THE
8 DEFENSE IS PLANNING ON USING OTHER PARTS OF THE
9 SURVEILLANCE VIDEO. BUT WE ARE NOT GOING BEYOND THAT
10 WITH RESPECT TO MR. HARMON.

11 THE COURT: I'M NOT QUITE SURE WHAT THE
12 DEFENSE WISHES TO PRESENT TO THE COURT BUT THAT IS
13 SUBJECT TO YOUR OBJECTION.

14 MS. NEWTON: THANK YOU, YOUR HONOR.

15 THE COURT: SO WE WILL WAIT UNTIL COUNSEL
16 FOR THE FRANKLIN INSTITUTE APPEARS.

17 MS. NEWTON: I THINK THERE IS ALSO ONE
18 OTHER MOTION THAT IS OUTSTANDING AS WELL. THE -- I WAS
19 NOT SURE IF THE COURT WAS JUST GOING TO WAIT UNTIL THE
20 TIME OF THE JURY INSTRUCTIONS TO DEAL WITH THEIR
21 OBJECTION SO THE GOVERNMENT CAN ARGUE ABOUT WHAT WORTH
22 MEANS, OR WHAT WORTH ENCOMPASSES.

23 THE COURT: WELL, I GUESS WE COULD USE
24 THE TIME TO DO THAT.

25 MS. MACEOIN: CERTAINLY, YOUR HONOR. IF

1 I CAN JUST FIND MY NOTES.

2 MS. HENRY: MAY WE BE SEATED, YOUR HONOR?

3 THE COURT: YES.

4 MS. HENRY: THANK YOU.

5 MS. MACEOIN: YOUR HONOR, THE DEFENSE
6 BROUGHT THIS MOTION TO THE COURT'S ATTENTION IN THAT IN
7 THEIR JURY INSTRUCTIONS, THE GOVERNMENT IS REQUESTING
8 THAT THE COURT INSTRUCT THE JURY ON THE BLACK'S LAW
9 DEFINITION OF "WORTH," WHICH WE MAINTAIN, FIRST OF ALL,
10 THERE IS NO NEED TO GO OUTSIDE THE STATUTE TO DEFINE
11 "WORTH" AS IT IS DEFINED SQUARELY WITHIN, MEANING
12 SOMETHING HAS A WORTH IN EXCESS OF \$5,000 OR MORE THAN
13 \$100,000, THE WORTH IS DEFINED BY THE FOLLOWING AND
14 SUBSEQUENT MONETARY VALUE OF THE STATUTE.

15 SECOND OF ALL, YOUR HONOR, EVEN IF YOU
16 FIND THAT "WORTH" IS NOT DEFINED THERE, LET'S LOOK AT
17 THE LEGISLATIVE HISTORY. AND PAGE 3 OF OUR MOTION IN
18 LIMINE -- OR PAGE 2, ACTUALLY, WE TALK ABOUT THE
19 LEGISLATIVE HISTORY IN THE CASE OF UNITED STATES VERSUS
20 PRITCHARD, WHICH YOUR HONOR IS VERY FAMILIAR WITH, AND
21 TALK ABOUT HOW THIS PARTICULAR STATUTE CAME INTO BEING
22 TO CIRCUMVENT MAJOR ART CRIMES, CITING THE ISABELLA
23 STEWART GARDNER MUSEUM IN BOSTON. AND THAT SPECIFIC
24 MONETARY VALUE WAS PLACED IN THE ORIGINAL STATUTE. IT
25 ACTUALLY EVOLVED. IT WAS A LOWER THRESHOLD AND THEN IT

1 BECAME HIGHER THROUGH THE COURSE OF THE LEGISLATIVE
2 PROCESS.

3 WE ALSO CITE THAT THERE ARE SEVERAL OTHER
4 STATUTES UNDER THIS SECTION, WHICH HAS TO DO WITH THEFT
5 OR EMBEZZLEMENT, WHERE THE JURISDICTIONAL THRESHOLD WAS
6 RAISED, OFTEN TO ACCOMMODATE WITH INFLATION. FOR
7 EXAMPLE, THIS PARTICULAR STATUTE AT ONE POINT WAS \$100.
8 BUT REALIZING THAT ALMOST ANYTHING NOWADAYS IS WORTH
9 \$100, THEY RAISED IT TO \$5,000 AS A MINIMUM. THAT
10 INDICATES A VERY SPECIFIC LEGISLATIVE INTENT TO NOT
11 CRIMINALIZE THEFT OF PIECES OF ART UNDER A CERTAIN
12 MONETARY VALUE.

13 LASTLY, YOUR HONOR, IN THE CASE OF UNITED
14 STATES VERSUS PRITCHARD, YOUR HONOR INSTRUCTED THE JURY
15 -- SPECIFICALLY IT'S ON PAGE 112. THIS IS A TRANSCRIPT,
16 YOUR HONOR. I CAN PASS IT UP TO THE COURT. ON THE
17 DEFINITION OF A TERM OF "OBJECT OF CULTURAL HERITAGE"
18 AND I CAN PASS IT UP TO THE COURT.

19 MAY I APPROACH, YOUR HONOR?

20 THE COURT: YES.

21 MS. MACEOIN: THIS IS -- WE HAVE THE
22 CAPTION PAGE OF UNITED STATES VERSUS PRITCHARD. WE HAVE
23 INCLUDED THE RELEVANT PAGES, BUT ON PAGES 112 LINES 8
24 THROUGH 11 THIS COURT INSTRUCTED THE JURY TO JUST THIS:
25 THE TERM "OBJECT OF CULTURAL HERITAGE" IS DEFINED IN THE

1 STATUTE AS AN OBJECT THAT IS OVER 100 YEARS OLD AND
2 WORTH IN EXCESS OF \$5,000 OR WORTH AT LEAST \$100,000.
3 THE JURY DIDN'T NEED ANY FURTHER EXPLANATION BECAUSE
4 THERE ISN'T ANY REQUIRED.

5 LASTLY, YOUR HONOR, IF THERE IS ANY
6 AMBIGUITY AT ALL IT SHOULD COME DOWN ON THE SIDE OF THE
7 DEFENSE UNDER THE RULE OF LENITY AND WE CITE THE
8 APPROPRIATE CASE LAW, WHICH IS PREVALENT IN THAT AREA.
9 BUT WE MAINTAIN IT'S NOT AMBIGUOUS, EVEN IF WE ARE
10 LOOKING AT THE STATUTORY HISTORY. AND THEN EVEN IF YOU
11 GET DOWN THAT FARTHER LINE, THE RULE OF LENITY REQUIRES
12 THAT THE COURT PROVIDES THE EXACT INSTRUCTION IT DID IN
13 UNITED STATES VERSUS PRITCHARD.

14 THE COURT: OKAY.

15 MS. NEWTON.

16 MS. NEWTON: YOUR HONOR, WORTH OF OVER
17 \$5,000 IS NOT A DEFINITION OF WORTH. IT'S THE
18 JURISDICTIONAL VALUE THAT IS BEING GIVEN. AND THE THIRD
19 CIRCUIT HAS RECOGNIZED THIS AS THE REASON THAT THIS TYPE
20 OF NUMBER IS GIVEN IS -- AS MS. MACEOIN SAID, IT IS SO
21 THAT CRIMES OF LESSER VALUE ARE NOT GOING TO BE -- NOT
22 HAVE THOSE KINDS OF TIME BEING SPENT BY FEDERAL COURTS
23 HEARING THOSE. IT WOULD BE IN A STATE COURT. SO YEAH,
24 THERE IS NO QUESTION IT'S A JURISDICTIONAL VALUE LIMIT
25 OF \$5,000 OR MORE. BUT COMPARING THIS TO 2314, FOR

1 EXAMPLE, WHERE WE HAVE THE ISSUE OF VALUE OF \$5,000 OR
2 MORE, AND THERE CONGRESS SPECIFICALLY DEFINED VALUE AS
3 NOT VALUE OF \$5,000 OR MORE AS A DEFINITION, BUT VALUE
4 IN THAT STATUTE IS DEFINED AS HARD VALUE, FACE VALUE OR
5 FAIR MARKET VALUE. AND COURTS HAVE GONE EVEN FURTHER IN
6 LOOKING AT VALUE IN THAT CONTEXT SAYING: ANY REASONABLE
7 METHOD COULD BE USED.

8 SO LOOKING AT THE TERM OF AN ANALOGOUS
9 STATUTE, THERE ARE TIMES WHEN THE JURY NEEDS TO
10 UNDERSTAND EXACTLY WHAT IS IT THAT WE ARE TALKING ABOUT
11 HERE. AND COURTS HAVE OFTEN USED DICTIONARY
12 DEFINITIONS. THE THIRD CIRCUIT HAS DONE THAT. IT DID
13 IT IN THE SEGREST CASE, WHEN TRYING TO DEFINE WHAT A
14 "GOOD" MEANT. WE HAD "GOOD" IN 2314, BUT WHAT DID IT
15 MEAN? AND THE COURT WENT TO BLACK'S LAW DICTIONARY TO
16 BE ABLE TO GIVE A DEFINITION, A CLEARER DEFINITION OF
17 WHAT A "GOOD" IS.

18 THE PURPOSE OF THE BLACK'S LAW DICTIONARY
19 DEFINITION IS SIMPLY TO SHOW WHAT "WORTH" ENCOMPASSES
20 ALL THE QUALITIES THAT MAKE SOMETHING VALUABLE. SO IT
21 ENCOMPASSES NOT JUST THE MATERIALS VALUE OF IT, BUT IT
22 ALSO ENCOMPASSES THE HISTORICAL VALUE. THE EXAMPLE I
23 USED IN RESPONSE TO THE MOTION IS THE FRANKLIN
24 INSTITUTE, FOR EXAMPLE, HAS A PAIR OF BENJAMIN FRANKLIN
25 SPECTACLES IN THEIR COLLECTION. WELL, IT'S BECAUSE OF

1 THE HISTORICAL SIGNIFICANCE, THAT THEY WERE BENJAMIN
2 FRANKLIN'S, THAT GIVES THAT A GREATER WORTH OTHER THAN
3 THAT IT'S A PAIR OF OLD GLASSES.

4 THE LIBERTY BELL, IF NOT FOR THE
5 HISTORICAL SIGNIFICANCE IN CONNECTION WITH THE COLONIES'
6 DECLARATION OF INDEPENDENCE, IS WHAT GIVES THE LIBERTY
7 BELL HISTORICAL SIGNIFICANCE AND GREATER WORTH. IF NOT,
8 IT'S JUST ANOTHER DAMAGED OLD BELL.

9 SO GIVEN THAT, THE GOVERNMENT BELIEVES
10 IT'S APPROPRIATE THAT THE JURY BE INSTRUCTED THAT
11 "WORTH" ENCOMPASSES ALL OF THE QUALITIES THAT GIVES
12 SOMETHING VALUE.

13 MS. MACEOIN: MAY I RESPOND, YOUR HONOR?

14 THE COURT: YES.

15 MS. MACEOIN: FIRST OF ALL, THE
16 GOVERNMENT IS CITING VIOLATIONS OF 2314, WHICH IS THE
17 EXACT STATUTE THAT THEY WITHDREW IN THIS CASE. AND IT
18 IS TRUE IN INTERPRETING THAT STATUTE, COURTS HAVE GONE
19 OUTSIDE OF NORMAL METHODS AND ALLOWED ANY METHOD, ET
20 CETERA. BUT THAT SHOULD NOT EVEN BE AT ISSUE HERE.
21 THEY WITHDREW ON THEIR OWN VOLITION THAT CHARGE HERE.

22 WE ARE TALKING ABOUT 668, WHICH IS VERY
23 CLEAR ON ITS FACE. "WORTH" IS DEFINED BY THE SUBSEQUENT
24 WORTH OF THE STATUE.

25 ADDITIONALLY, YOUR HONOR, THERE IS GRAVE

1 OPPORTUNITY FOR THE JURY TO BE VERY CONFUSED ABOUT
2 "WORTH" AND "VALUE." YOU KNOW, AN EXAMPLE THAT YOU CAN
3 THINK OF IS IF YOUR GRANDMOTHER KNITTED YOU A BLANKET,
4 THAT'S WORTH A LOT TO YOU. IT'S PRICELESS TO YOU. THE
5 WORTH IS GREAT, BUT YOU CAN'T GET MORE THAN \$20 ON EBAY
6 FOR IT. THAT'S THE STANDARD HERE BEFORE THE COURT.
7 WHAT WOULD THIS THUMB IN AND OF ITSELF BE IN THE FAIR
8 MARKET VALUE? AND IN FACT THE ESTIMATES THAT ARE GOING
9 TO BE COME UP WITH BY THE EXPERTS ALL INCORPORATE THE
10 FACT THAT THIS IS A VERY IMPORTANT ARCHAEOLOGICAL FIND.
11 IF NOT, THIS IS A PIECE OF CLAY. WITHOUT THIS BEING
12 ATTACHED TO THE TERRACOTTA WARRIORS AND THE SIGNIFICANCE
13 OF THAT FIND, IT IS A PIECE OF CLAY, AND IT'S WORTH
14 NOTHING. SO THE MONETARY VALUE GIVEN TO IT EVEN BY OUR
15 OWN EXERTS INCORPORATES THE WORTH AND VALUE OF IT BEING
16 PART OF THE XI'AN EXCAVATION SITE IN CHINA.
17 SO TO GO BEYOND THAT HAS GREAT POTENTIAL
18 FOR THE JURORS TO SAY OH, THESE THINGS ARE, QUOTE,
19 UNQUOTE, PRICELESS. YOU CAN'T PUT A -- JUST LIKE THAT
20 PRICELESS BLANKET YOUR GRANDMOTHER MADE FOR YOU. THAT
21 CONFUSES THE JURY, GETS WAY OFF THE LEGAL STANDARD AND
22 ACTUALLY VIOLATES DUE PROCESS.
23 SO WE MAINTAIN "WORTH" CANNOT BE DEFINED
24 AS ANYTHING OTHER THAN THE SUBSEQUENT WORDS OF THE
25 STATUTE, WHICH ARE THE MONETARY VALUE, WHICH IS ONE OF

1 THE MAIN ISSUES FOR THE JURY TO DETERMINE HERE.

2 THE COURT: IT SEEMS TO ME THE NATURE OF
3 THE CASE IS SUCH THAT YOU HAVE TO CONSIDER MORE THAN
4 JUST THE MONETARY VALUE. YOU HAVE TO LOOK AT ALL OF THE
5 CHARACTERISTICS OF WHAT WE ARE TALKING ABOUT. I KNOW
6 IT'S CLEAR THAT THE GOVERNMENT THINKS ONE WAY AND THE
7 DEFENSE THINKS ANOTHER WAY WHEN THE DEFENSE REFERS TO
8 THE FINGER AS A PIECE OF CLAY. I THINK IT'S A LITTLE
9 MORE THAN THAT.

10 MS. MACEOIN: WELL, I CONCEDE, YOUR
11 HONOR, IT IS. BUT MY ARGUMENT IS NOT THAT IT'S NOT
12 WORTH ANYTHING BECAUSE IT'S A PIECE OF CLAY. IT'S WORTH
13 A CERTAIN MONETARY VALUE BECAUSE OF THE CULTURAL AND
14 ARCHAEOLOGICAL IMPORTANCE OF IT BEING A TERRACOTTA
15 WARRIOR. THAT'S WHAT I MEAN BY THAT.

16 AND WE HAVE MONETARY VALUES THAT OUR
17 EXPECTS WILL TALK ABOUT THAT THE JURY IS THE ONE THAT
18 HAS TO REFER WHICH EXPERT TO AGREE WITH AND THEIR -- YOU
19 KNOW, REVIEW THEIR METHODOLOGIES IN COMING TO THAT
20 NUMBER.

21 BUT ALL OF THE EXPERTS AGREE OF THE
22 IMPORTANCE OF THE EXCAVATION, THE HISTORICAL
23 SIGNIFICANCE OF THE TERRACOTTA WARRIORS, AND THAT'S WHAT
24 GIVES IT A MONETARY VALUE.

25 THE COURT: AND I THINK THAT'S WHAT I'M

1 AM SAYING.

2 MS. MACEOIN: OKAY.

3 THE COURT: YOU'VE GOT TO CONSIDER MORE
4 THAN JUST THE MONETARY -- THE FIGURE, THE DOLLAR FIGURE.
5 SO I AM LEANING TOWARD PERMITTING THE INSTRUCTION. I
6 HAVE NOT LOOKED AT THE INSTRUCTION PER SE, BUT THE
7 GOVERNMENT CAN PROCEED WITH THAT IN MIND.

8 MS. NEWTON: THANK YOU, YOUR HONOR.

9 THE COURT: OKAY. WE HAVE A MOTION TO
10 QUASH THAT WAS FILED.

11 MR. SCHWARTZ: GOOD AFTERNOON, YOUR
12 HONOR. MAY I APPROACH?

13 THE COURT: YES.

14 MR. SCHWARTZ: MICHAEL SCHWARTZ, ON
15 BEHALF OF THE FRANKLIN INSTITUTE.

16 THE COURT: I RECOGNIZE YOU, MR.
17 SCHWARTZ.

18 MR. SCHWARTZ: IT'S BEEN A LONG TIME
19 SINCE I HAVE BEEN IN YOUR COURTROOM, YOUR HONOR.

20 THE COURT: YES, IT HAS.

21 MR. SCHWARTZ: THANK YOU FOR SEEING US
22 THIS AFTERNOON.

23 AS THE COURT IS AWARE, LAST WEEK YOU HAD
24 GRANTED A -- IN PART, A REQUEST BY THE DEFENDANT FOR A
25 RULE 17(C) SUBPOENA TO BE ISSUED TO ME BUT ON BEHALF OF

1 MY CLIENT, THE FRANKLIN INSTITUTE. ON FRIDAY, A DAY
2 AFTER WE RECEIVED YOUR ORDER, WE HAD NOT BEEN COPIED ON
3 THE PLEADINGS PRIOR TO THAT. THE DAY AFTER WE RECEIVED
4 YOUR ORDER, WE FILED A MOTION AS WE ARE PERMITTED TO DO
5 UNDER 17(C) SEEKING TO PARTIALLY QUASH THE SUBPOENA THAT
6 HAD BEEN ISSUED. WE HAVE ALREADY PRODUCED TO THE
7 DEFENDANT, PURSUANT TO THE COURT'S ORDER, RECORDS
8 RESPONSIVE AND INFORMATION RESPONSIVE TO PARTS A, B, C,
9 D, AND L OF THE COURT'S ORDER.

10 WHAT'S REALLY AT ISSUE, YOUR HONOR, IS
11 THE REQUESTS G AND M THAT ARE BASICALLY -- THE WAY THEY
12 WERE PROPOSED, THEY WERE WRITTEN TO COVER, G., ALL
13 COMMUNICATIONS BETWEEN THE FRANKLIN INSTITUTE AND THE
14 GOVERNMENT OF CHINA RELATING TO THE TERRACOTTA WARRIOR
15 EXHIBIT, AND, M., A SET OF INTERNAL COMMUNICATIONS,
16 ELECTRONIC AND OTHERWISE, AMONG FOLKS AT THE FRANKLIN
17 INSTITUTE.

18 MY COLLEAGUE, MS. TUTTLE, WHO JOINED ME
19 ON THE PAPERS, SPOKE TO -- I THINK IT WAS MS. HENRY LAST
20 WEEKEND, MS. MACEOIN. AND THEY PROPOSED LIMITING THOSE
21 TWO CATEGORIES TO ONLY ISSUES REGARDING THIS INCIDENT.
22 HOWEVER, THAT, YOUR HONOR, WE BELIEVE -- AND AS WE SAID
23 IN HERE -- IS STILL TOO BURDENSOME ON THE THIRD PARTY,
24 THE FRANKLIN INSTITUTE, AND OPPRESSIVE FOR A NUMBER OF
25 REASONS, AND IT'S REALLY A FISHING EXPEDITION.

1 THERE HAS BEEN NO PROFFER, EVEN IN THE
2 ORIGINAL PAPERS WHERE THERE WAS A LOT OF TALK -- AND I
3 WASN'T HERE LAST WEEK FOR THE DISCUSSION ABOUT ALL THE
4 RECORDS RELATING TO SECURITY ISSUES, BUT WHEN YOU LOOK
5 AT THE PAPERS, THE DEFENSE AT LEAST PROFFERED WHAT THEY
6 BELIEVE WAS SOME RELEVANCE TO THE SECURITY ISSUES, WHICH
7 THE COURT REJECTED.

8 WITH RESPECT TO THESE COMMUNICATIONS,
9 THEY ARE ASKING US TO SEARCH WHAT COULD BE THOUSANDS OF
10 COMMUNICATIONS, ELECTRONIC AND OTHERWISE, NOT FOR A
11 SPECIFIC COMMUNICATION OF A SPECIFIC ISSUE THAT IS
12 RELEVANT FOR THEIR DEFENSE AT TRIAL, BUT THEY WANT TO
13 JUST REVIEW ALL OF OUR INTERNAL COMMUNICATIONS ABOUT THE
14 THEFT OF THE THUMB. SOME OF THOSE ARE GOING TO BE
15 PRIVILEGED. I WAS RETAINED BY THE FRANKLIN INSTITUTE AT
16 THE TIME THAT THEY WERE DEALING WITH THE FBI, SO THERE
17 IS GOING TO HAVE TO BE A PRIVILEGE REVIEW OF THE
18 COMMUNICATIONS.

19 BUT WE COME BACK TO -- UNDER RULE 17(C),
20 WE HAVE THE NIXON STANDARD, AND THE NIXON STANDARD WAS
21 PUT TO FOCUS ON THE SPECIFICS OF THE WATERGATE TAPES
22 WHERE THEY WERE IDENTIFIED BY DATE, PERSON, SUBJECT
23 MATTER. AND THE SUPREME COURT SAID THAT THAT WAS
24 SPECIFIC ENOUGH, RELEVANT ENOUGH, NOT A GENERAL "ALL
25 COMMUNICATIONS," AS THE DEFENDANT HAS PUT HERE.

1 WE HAVE A COUPLE OF CONCERNS ABOUT THE
2 BREADTH AND THE OPPRESSIVENESS THAT WE LAID OUT IN OUR
3 PAPERS, YOUR HONOR.

4 WITH RESPECT TO THE BURDENSOMENESS ON US,
5 WE ARE A THIRD PARTY, WE ARE THE VICTIM HERE. WE DON'T
6 HAVE THE I.T. CAPABILITIES WHERE THIS COULD JUST BE
7 PUNCHED OUT TOMORROW. THE FRANKLIN INSTITUTE WOULD NEED
8 TO RETAIN AN I.T. CONSULTANT TO DO THE SEARCHES THAT ARE
9 SUGGESTED.

10 EVEN WITH THE LIMITATION OF FROM THE
11 THEFT ON, THAT WOULD BE JANUARY OF 2018, WE WOULD HAVE
12 15 MONTHS OF ELECTRONIC COMMUNICATIONS. AS YOU CAN
13 IMAGINE, GIVEN THIS THEFT, THERE WERE LOTS OF INTERNAL
14 COMMUNICATIONS AND THERE WERE LOTS OF COMMUNICATIONS
15 WITH CHINA ABOUT WHAT'S GOING TO HAPPEN, WHEN THE
16 EXHIBIT IS GOING TO GET RETURNED, HOW IT'S GOING TO BE
17 RETURNED.

18 SO THE VOLUME OF MATERIALS WITHOUT ANY
19 RELEVANCE OR CLEAR SPECIFICITY AS TO RELEVANCE MAKES
20 THOSE TWO PORTIONS OF THE SUBPOENA IMPROPER.

21 ON THE OPPRESSIVENESS SIDE, YOUR HONOR,
22 AS I THINK THE DEFENDANT HAS SAID IN THEIR PAPERS
23 THROUGHOUT, THERE IS A LOT OF BLAME POINTING, THAT THIS
24 WAS THE FRANKLIN INSTITUTE'S FAULT BECAUSE WE DIDN'T
25 HAVE THE RIGHT SECURITY THERE TO DEFER -- TO DETER

1 SOMEONE LIKE THE DEFENDANT, IF HE DID WHAT THE
2 GOVERNMENT HAS SAID HE DID.

3 BUT THERE ARE ISSUES AMONG THE PARTIES --
4 AMONG THE FRANKLIN INSTITUTE, THE SECURITY COMPANY, THE
5 CATERING COMPANY, AND THE GOVERNMENT OF CHINA -- STILL
6 UNRESOLVED DISPUTES. AND TO ALLOW A BROAD FISHING
7 EXPEDITION OF OUR INTERNAL RECORDS WOULD BE UNFAIR AND
8 IMPROPER TO THE FRANKLIN INSTITUTE, ESPECIALLY WHEN YOU
9 BALANCE THAT AGAINST WHAT RELEVANCE HAS BEEN PROFFERED.

10 AND I WOULD SUBMIT, WHEN I WENT BACK AND
11 READ THIS MORNING THE DEFENDANT'S ORIGINAL REQUEST TO
12 YOU FOR THE 17(C) SUBPOENA, THEY TALKED ABOUT A NUMBER
13 OF THE OTHER CATEGORIES THAT ARE IN THE SUBPOENA, SOME
14 OF WHICH THE COURT HAS DENIED, AND SOME OF WHICH WE HAVE
15 ALREADY PROVIDED ADDITIONAL RESPONSES.

16 BUT THERE IS NO PROFFER THAT THEY MADE TO
17 YOU ABOUT WHY THESE BROAD CATEGORIES OF COMMUNICATIONS
18 WITH THE CHINESE, ARE INTERNAL COMMUNICATIONS AMONG, I
19 THINK IT WAS FOUR HIGH-LEVEL PEOPLE, WOULD BE RELEVANT.

20 SO I THINK IF THEY COME HERE RIGHT NOW
21 AND SAY TO YOU, HERE IS WHY IT'S RELEVANT -- ACTUALLY, I
22 THINK IT'S TOO LATE, BUT I ALSO DON'T BELIEVE THAT THEY
23 HAVE SATISFIED THE STANDARD UNDER NIXON ADOPTED BY THE
24 THIRD CIRCUIT IN, I THINK IT'S CULTHER- -- CUTHBERTSON
25 CITED IN EVERYBODY'S PAPERS AND APPLIED BY A NUMBER OF

1 DISTRICT COURTS HERE IN THE EASTERN DISTRICT.

2 I'M HAPPY TO ANSWER ANY QUESTIONS YOU
3 HAVE OR --

4 THE COURT: LET ME HEAR FROM THE DEFENSE.

5 MR. SCHWARTZ: THANK YOU.

6 MS. HENRY: SO, YOUR HONOR, WE HAVE
7 SPOKEN TO COUNSEL TO TRY TO NARROW WHAT WE ARE ASKING
8 FOR, BECAUSE IT'S ALSO VERY LATE IN THE GAME AND WE
9 UNDERSTAND, YOU KNOW, THE TIME CONSTRAINTS EVERYONE IS
10 UNDER.

11 I GUESS IF WE WANTED TO NARROW IT EVEN
12 FURTHER, WHAT WE ARE LOOKING FOR IS COMMUNICATIONS
13 BETWEEN -- I THINK WHAT WOULD BE RELEVANT, YOUR HONOR,
14 WOULD BE COMMUNICATIONS BETWEEN THE CHINESE GOVERNMENT
15 AND THE FRANKLIN INSTITUTE -- INITIALLY WE HAD ASKED FOR
16 REGARDING TERRACOTTA WARRIORS. I UNDERSTAND THAT'S TOO
17 MUCH. THEN WE SAID REGARDING THE INCIDENT.

18 THE ISSUE NOW, AT LEAST WITH THE EVIDENCE
19 WE HAVE HEARD SO FAR, IS THAT IT'S THE -- IT'S THE
20 CHINESE GOVERNMENT THAT HAD PUT THE ESTIMATION OF VALUE
21 ON THE TERRACOTTA WARRIORS TO BEGIN WITH. IT'S THEIR
22 VALUATION. SO CONVERSATIONS AND CORRESPONDENCE
23 REGARDING THIS ISSUE, REGARDING LOSS OF VALUE, REPAIRS,
24 ANYTHING OF THAT NATURE I THINK WOULD BE RELEVANT TO
25 THIS ISSUE OF VALUE, WHICH IS CLEAR FROM ALL OF US THAT

1 THAT'S A MAJOR ISSUE IN THE CASE.

2 THE ONLY OTHER THING IS, THE REASON THAT
3 WE ARE ASKING QUESTIONS, YOUR HONOR, ABOUT THE --
4 SPECIFICALLY, YOU KNOW, THE AFTER-HOURS VERSUS THE
5 REGULAR DAYTIME OPERATIONS OF THE MUSEUM, THE GOVERNMENT
6 NEEDS TO PROVE THAT IT WAS OPERATING AS A MUSEUM AT THE
7 TIME OF THE CRIME. SO WAS IT A MUSEUM? AND THERE'S
8 ARGUMENTS FOR US TO BE MADE. SO THAT'S WHY WE WANTED TO
9 KNOW ABOUT WHAT WAS GOING ON IN TERMS OF THE NIGHT CLUB
10 ASPECT OF IT. WAS IT OPERATING AS A NIGHT CLUB, OR WAS
11 IT OPERATING AS A MUSEUM? THAT'S A QUESTION OF FACT FOR
12 THE JURY TO DECIDE.

13 THE OTHER THING IS THE CARE, CUSTODY, AND
14 CONTROL. WHO HAS CARE, CUSTODY, AND CONTROL? THE
15 GOVERNMENT HAS TO PROVE THAT, THAT THE MUSEUM IS THE ONE
16 WHO HAD CARE, CUSTODY, AND CONTROL OF THE EXHIBIT AT THE
17 TIME OF THE -- OF THE ITEMS AT THE TIME THAT'S IN
18 QUESTION.

19 YOU KNOW, THERE IS TWO -- MY
20 UNDERSTANDING FROM REVIEWING THIS IS THERE'S TWO
21 DIFFERENT SECURITY COMPANIES, AND I THINK THAT MIGHT BE
22 WHAT COUNSEL IS ALLUDING TO, THAT THERE'S UNRESOLVED
23 ISSUES ABOUT WHICH SECURITY COMPANY WAS RESPONSIBLE FOR
24 THE SECURITY THAT NIGHT. SO IT'S NOT JUST ABOUT WHETHER
25 OR NOT THERE'S A LAPSE OF SECURITY. IT'S IS THE

1 GOVERNMENT ABLE TO PROVE THAT THE FRANKLIN INSTITUTE WAS
2 OPERATING AS A MUSEUM? ARE THEY ABLE TO PROVE CARE,
3 CUSTODY, AND CONTROL OF THE EXHIBIT AT THE TIME IN
4 QUESTION?

5 SO WE ARE ASKING QUESTIONS ABOUT THE
6 CONVERSATIONS WITH -- SPECIFICALLY WE ARE ASKING
7 ABOUT -- CATEGORY G WOULD BE COMMUNICATIONS BETWEEN THE
8 CHINESE GOVERNMENT AND THE FRANKLIN INSTITUTE. MAYBE --
9 I DON'T KNOW IF THERE'S COMMUNICATIONS WITH THE
10 WITNESSES.

11 THEY ARE CALLING THREE CHINESE WITNESSES.
12 IF THERE WERE COMMUNICATIONS WITH THOSE PARTICULAR
13 WITNESSES AND THE FRANKLIN INSTITUTE, WE WOULD BE ASKING
14 FOR THAT BECAUSE THAT WOULD BE -- COULD BE RELEVANT FOR
15 CROSS-EXAMINATION. AGAIN, I'M NOT SURE. I WOULD ASSUME
16 THAT THERE WOULD BE SOME TALK OF VALUE IN THERE, WHICH
17 WOULD BE RELEVANT IN THIS CASE.

18 AND THEN THE COMMUNICATIONS ABOUT SAFETY
19 AND SECURITY, CATEGORY M, HAD TO DO WITH THE ISSUE OF
20 CARE, CUSTODY, AND CONTROL AND WHO WAS RESPONSIBLE AND
21 WHO WAS SUPPOSED TO BE IN -- IN TAKING CARE AND ENSURING
22 THE SAFETY PURSUANT TO THE INSURANCE POLICY, AS YOU
23 HEARD TODAY, OF THAT EXHIBIT AT THE NIGHT IN QUESTION,
24 WHICH IS NOT NECESSARILY WHO IS RESPONSIBLE FOR
25 PROVIDING SECURITY DURING THE DAYTIME.

1 MR. SCHWARTZ: MAY I, YOUR HONOR?

2 THE COURT: YES.

3 MR. SCHWARTZ: SO I JUST HEARD MS. HENRY
4 SAY, I ASSUMED THAT THERE WOULD BE TALK, THAT I AM
5 LOOKING FOR GENERAL COMMUNICATIONS. THAT'S EXACTLY WHAT
6 IS PROHIBITED BY NIXON IN 17(C). IF I MAY -- AND ALSO,
7 WE MAY WANT TO USE THIS FOR CROSS-EXAMINATION OF A
8 WITNESS THE GOVERNMENT MAY CALL.

9 RECENTLY JUDGE DUBOIS IN THE *SMUKLER*
10 CASE, WHICH IS REPORTED AT 2018 U.S. DISTRICT LEXIS
11 1273, 20. JUDGE DUBOIS HAD A SIMILAR, VERY BROAD
12 DEFENSE 17(C) SUBPOENA TO FOLKS AT THE FEDERAL ELECTIONS
13 COMMISSION -- THIS WAS THE CASE THAT INVOLVED THE
14 POLITICAL ADVISOR -- AND TO THE CAMPAIGN COMMITTEES OF
15 TWO CLIENTS OF MR. SMUKLER'S.

16 AND THE COURT CITED *CUTHBERTSON*,
17 C-U-T-H-B-E-R-T-S-O-N, WHICH WE BOTH CITED IN OUR
18 PAPERS. IT'S THE 3RD CIRCUIT STANDARD FOR THIS -- AND
19 SAID, THIS IS NOT DISCOVERY LIKE IN A CIVIL CASE. IF
20 MS. HENRY WAS ARTICULATING A SUBPOENA OR A DOCUMENT
21 REQUEST IN A CIVIL CASE AND WE WERE UNDER RULE 26,
22 CERTAINLY THERE WOULD BE A LOT OF LEEWAY TO DISCOVER
23 THINGS, BUT 17(C) IS NOT INTENDED AS A FISHING
24 EXPEDITION. IT'S WHAT JUDGE DUBOIS AND THE THIRD RD
25 CIRCUIT HAVE SAID.

1 AND THERE IS ALSO CITATIONS THAT SAY EVEN
2 IF WHAT THEY WANT IS IMPEACHMENT MATERIALS, WE WOULD
3 LOVE TO SEE WHAT SOMEONE WHO IS A WITNESS MAY HAVE SAID.
4 WE DON'T KNOW WHAT THEY SAID, BUT THEY MAY HAVE SAID --
5 BECAUSE WE MAY BE ABLE TO IMPEACH WITH THEM, THE COURT
6 JUDGE DUBOIS CITES TO THE THIRD CIRCUIT'S MERLINO
7 CASE -- AND I'LL JUST READ A QUICK QUOTE: AS FOR THE
8 DISTRICT COURT'S REJECTION OF THE RULE 17 SUBPOENA,
9 DEFENDANTS ACKNOWLEDGE THAT IMPEACHMENT MATERIAL IS
10 GENERALLY NOT SUBJECT TO PRETRIAL DISCLOSURE UNDER THE
11 RULE.

12 SO I AGAIN COME BACK TO, YOUR HONOR, THIS
13 IS NOT A SIMPLE REQUEST. IF IT WAS A REQUEST FOR -- FOR
14 INSTANCE, THEY ASKED FOR ALL OF THE ADVERTISEMENTS OF
15 THIS EVENT. WE SENT IT TO THEM. WE PULLED SPECIFIC
16 ADVERTISEMENTS OF THE PARTY SO THEY CAN MAKE THEIR
17 ARGUMENT ABOUT WHETHER WE ARE A MUSEUM OR NOT, AND WE
18 HAVE GIVEN THAT TO THEM. WE ARE NOT CHALLENGING THE
19 RIGHT TO GET RELEVANT INFORMATION THAT IS DIRECTLY
20 RELATED TO THEIR DEFENSE, BUT TO ASK A NON-PROFIT
21 THIRD-PARTY VICTIM TO HAVE TO SEARCH 15 MONTHS OF
22 ELECTRONIC COMMUNICATIONS ON AN ASSUMPTION THAT THERE
23 MAY BE SOMETHING THAT'S RELEVANT IS NOT PROPER UNDER
24 17(C) AND THE STANDARDS AS INTERPRETED BY THE SUPREME
25 COURT, BY THE 3RD CIRCUIT, AND BY JUDGES OF THIS COURT.

1 THE COURT: OKAY. THERE BEING NOTHING
2 FURTHER, THE COURT WILL HOLD THE MATTER UNDER ADVISEMENT
3 AND GIVE THE RULING TOMORROW BEFORE WE GET STARTED.

4 MS. NEWTON: YOUR HONOR, IF THE
5 GOVERNMENT CAN BE HEARD FOR JUST ONE MOMENT ON A
6 RELATED ISSUE. I HEARD MS. HENRY REFER TO THE -- AN
7 ARGUMENT ABOUT WHETHER THE FRANKLIN INSTITUTE WAS
8 OPERATING AS AN MUSEUM. THAT IS NOT THE LANGUAGE OF THE
9 STATUTE. THE QUESTION IS WHETHER THE FRANKLIN INSTITUTE
10 IS A MUSEUM. NOT -- I MEAN, IF THEY ARE CLOSED, DOES
11 THAT MEAN THEY ARE NOT OPERATING AS A MUSEUM, THEREFORE
12 A THEFT WHILE THEY ARE CLOSED CAN'T BE CONSIDERED A
13 THEFT FROM A MUSEUM? SO IT'S NOT OPERATING. THE
14 LANGUAGE IS "THEFT FROM A MUSEUM."

15 AND WITH RESPECT TO CARE, CUSTODY AND
16 CONTROL, WHAT THAT IS REFERRING TO, WHO HAS CUSTODY OF
17 THE OBJECT? NOT WHAT KIND OF CARE. CARE, CUSTODY AND
18 CONTROL SIMPLY MEANS WHO HAS CUSTODY OF THE OBJECT AND
19 THAT IS WHAT IS BEING STOLEN FROM.

20 THE COURT: VERY WELL.

21 WE WILL RECESS THIS MATTER UNTIL TOMORROW
22 MORNING AT 9:30.

23 (COURT ADJOURNED AT 4:23 P.M. ^ CK.)


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I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

4/9/19
DATE


OFFICIAL COURT REPORTER
LYNN MCCLOSKEY, RPR

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